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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 12th October 1953

S.R.O. 2036.—Whereas the election of Dr. Hazura Singh, as a member of the Legislative Assembly of the State of P.E.P.S.U. (now dissolved) from the Faridkot constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri L. Kesho Ram, son of Shri L. Nathu Ram, Municipal Commissioner, Faridkot;

And whereas the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, KAPURTHALA AT PATIALA

V. B. Sarwate,—Chairman.

Kartar Singh,—Member.

Jai Ram Saxena,—Member.

ELECTION PETITION NO. 160 OF 1952

L. Kesho Ram, son of L. Nathu Ram, Municipal Commissioner, Faridkot—Petitioner.

Versus

1. Dr. Hazru Singh, M.B., B.S., Faridkot;
2. Giani Zail Singh, son of S. Kishan Singh, Ex. Minister, PEPSC, Patiala;
3. S. Gurnam Singh Tir, son of Nand Singh of village Kot Sukhia, Tahsil Faridkot, District Bhatinda;
4. S. Karnaal Singh Dod, son of Narain Singh resident of Faridkot City;
5. S. Sandhura Singh, son of Jhanda Singh of village Mani Singh Wala, Tahsil Faridkot, District Bhatinda;
6. S. Surain Singh, son of Hamir Singh of village Golewala, Tahsil Faridkot, at present resident of Faridkot City;
7. S. Harpal Singh, son of Vir Singh of village Pakhi, Tahsil Faridkot, at present resident of Faridkot City;
8. S. Bakhtawar Singh, son of S. Dasounda Singh of village Pakhi at present resident of Faridkot City;
9. Dalawar Singh, son of Diwan Singh, resident of Faridkot City;

10. Pt. Sat Dev, son of Ch. Daip Chand of Jaito;
11. Raja Harinder Singh, Raja, Faridkot, Faridkot City;
12. Pt. Chetan Dev, son of Khushi Ram, resident of Faridkot City;
13. Master Sunder Singh, son of Badan Singh resident of Faridkot City;
14. S. Joginder Singh, son of Jaimal Singh, resident of Dhilwan Khurd, Tahsil Faridkot, District Bhatinda;
15. S. Ranjit Singh, son of Hakam Singh of Deep Singh Wala, Tahsil Faridkot;
16. Dr. Jagdish Lal, son of Chandu Lal resident of Faridkot;
17. S. Multan Singh, son of Kanahya Mal of Faridkot;
18. S. Chand Singh, son of Sher Singh of Pindi Balochan;
19. Shri Brij Lal, son of Charan Ram of Faridkot;
20. S. Jawahar Singh, son of Chanan Ram of Faridkot;
21. Shri Ram Nath, son of Waziri Chand of Jaito;
22. S. Gurdial Singh, son of S. Kishan Singh of Wandar Jatana; and
23. S. Mahan Singh son of S. Kishan Singh of Wandar Jatana; and
24. Shri Jugal Kishore, son of Shri Kalu Ram of Kot Kapura—*Respondents.*

Order Delivered on 28-9-53.

In the general elections to the PEPSU Legislative Assembly in January 1952 the respondent No. 1 Dr. Hazura Singh of Faridkot was declared returned from the Faridkot Constituency. All the 24 respondents to the petition had filed their nomination papers. But the nomination of a number of them were rejected by the Returning Officer. The petitioner was not a candidate for the election but he has presented this petition calling the election in question as an elector in the Constituency. It is grounded *inter alia* upon the alleged improper rejection of the nomination papers of respondent No. 2 Giani Zail Singh, respondent No. 12 Chetan Dev, respondent No. 13 Master Sunder Singh and respondent No. 14 S. Joginder Singh. The petitioner has also made allegations of various corrupt practices committed at the election by the respondent No. 1 or by the respondent No. 11 the Raja of Faridkot and certain named persons at the instance of the respondent No. 1 or the Raja—it being the petitioner's case that the Raja realizing that his own nomination was for good reasons likely to be rejected, had decided to put up the respondent No. 1 as his dummy and had resorted to the alleged corrupt and illegal practices to support the respondent No. 1 and to secure his return. The return of Election expenses of the respondent No. 1 is also alleged to be false in material particulars.

2. At the stage of issues the petitioner stated that he desired to abandon the pleas made in paragraphs 13 and 15 of the petition, the particulars of which were given in lists D and F respectively. The other questions raised being all controverted by the respondent No. 1 and also by the respondent No. 11 following issues were fixed for trial:

- (1) Was the petitioner an elector in the Faridkot Constituency and as such entitled to present this Election Petition?
- (2) Was the rejection of the nomination of respondent No. 2 Giani Zail Singh by the Returning Officer improper?
- (3) Were respondents No. 12 Chetan Dev, No. 13 S. Sunder Singh and No. 14 Joginder Singh due to their names being on the list of assessors and for having sat in Sessions trial as assessors, disqualified under Art. 191 of the Indian Constitution as being holders of office of profit under the Government?
- (b) Were the nominations of the respondents No. 12, 13 and 14 improperly rejected?
- (4) Did the improper rejection of any of the nominations materially affect the result of the election?
- (5) (a) Did respondents Nos. 1 and 11 address meetings at Mani Singh Wala and Mehmowan as alleged by the petitioner in annexure 'A' and did they in those meetings make statements regarding withdrawal of his candidature by respondent No. 15 or about their scheme of resignation by respondent No. 1 after election in order to enable the Raja of Faridkot to seek election again?
- (b) Do the representations made in the meetings amount to major corrupt practices and under which clauses of Section 123 R.P. Act?

(6) Does petitioner prove the commission of corrupt practice of bribery by respondent No. 1 and 11 by the maintenance of Kitchen for feeding at Qila Faridkot, at Jubilee Cinema, Faridkot and at Bhagat Ram's Hotel, Faridkot, at village Golewala and at village Sadiq and at village Faikka as alleged in annexure 'B'?

(7) Does petitioner prove the obtaining of assistance by respondent No. 1 for the furtherance of his prospects of election from Arjan Singh, Lamberdar, Inder Singh, Lamberdar, Sher Singh, Patwari, B. Gian Chand, Overseer or Lady Doctor Harnam Kaur as alleged in annexure 'C'?

(b) Is any commission of corrupt practice under clause 8 of Section 123 R.P. Act established?

(8) Did respondent No. 1 or the respondent No. 11 on his behalf employ motor vehicles for conveyance of electors from or to any polling stations as alleged in annexure 'E' and is commission of corrupt practice under section 123(6) R.P. Act established?

(9) Does the petitioner show the return of election expenses of respondent No. 1 to be false in any material particulars? Is the declaration verifying that return false as alleged by the petitioner?

(10) What is the proper order to be made in this case under Section 98 and 99 of the R.P. Act 1951?

3. The PEPSU Legislative Assembly was dissolved by the President's proclamation dated 4th March 1953 made under *Act 356 of the Constitution*. The proclamation has also given a direction for reconstitution of the assembly after fresh general elections. Since this was supposed to have the effect of making the seat vacant for a fresh election, the respondent No. 1 claimed that the election petition was rendered infructuous and could not be pursued by the petitioner for any purpose whatsoever. He, therefore, moved an application for its dismissal. The Tribunal constituted of S. Mehar Singh as Chairman and S. B. Kartar Singh and Shri Jia Ram Saxena as members found by a majority (S. Mehar Singh dissenting) that the dissolution of the assembly did not affect the petition in any respect and that all the questions raised by the petitioner still remained open for enquiry as before. This was the Tribunal's view about maintainability of all the petitions which were then pending before it and the same order disposed of the point of the effect of dissolution of the Assembly in all the petitions—the finding being that no petition was affected by the dissolution. That order has been reproduced as Annexure 'A' to the final order in Election petition No. 260 'Lachman Singh Vs. Basawa Singh' disposed of on 30th June 1953. (published in the Gazette of India Extraordinary dated July 27, 1953).

4. By the dissolution of the Assembly the main object of the petition which was to get the seat vacated and available for election again was achieved. The allegations of the corrupt practices were made with the secondary object of drawing public attention to the mal-practices resorted to in the election and to have those responsible for their commission penalised. The necessity of proving any corrupt practices for getting the election declared void has not now remained and for that reason perhaps the petitioner has not sought to lead evidence on all the issues that were raised by him. We will, accordingly, refer to and determine only the issues which are attempted to be proved by the petitioner.

5. For proper appreciation of the Acts and the evidence in this case, it is necessary to refer to the political back-ground of this first general election in Faridkot. The Faridkot Constituency is a part of the former East Punjab States of Faridkot of which till the time of its integration with the Indian Union the 11th respondent Raja Sir Harinder Singh (hereinafter referred to as the Raja) had been the ruler. Even during the time of the Raja though politics had been taboo, some politically minded people amongst his subjects had started an organization styled Praja Mandal, the equivalent of the Indian National Congress in British India. The activities of this body did not naturally find favour with the Raja and in 1948 before the integration, we are told the Praja Mandal had gone to the length of declaring the setting up of a parallel Government of Faridkot State styled Azad Faridkot Government in opposition to the Raja. The agitators were, however, beaten back and the Raja's authority vindicated. After the integration of the State in the Indian Union, the Praja Mandal was replaced by the all India Political Party—the Congress and before the last general election, another major political party Shiromani Akali Dal had taken field in this area. These two major political parties were expected to be contesting for this seat in the PEPSU Assembly. The Raja was not unnaturally anxious to retain as much of his dominant position in his erstwhile State as was possible to achieve in the

new set up Counting on the support of a large number of his former subjects still loyal to his person, he was desirous to be elected as the representative of the people and so to retain the position of the first citizen in the State, in spite of the political parties which were now openly functioning. He therefore, decided to stand for the election and filed his nomination paper. He, however, as the petitioner states, anticipated the rejection of his nomination for the reason that as Lambardar he would be disqualified from being chosen as member. He, therefore, failing the attempt of securing his own election desired at least a man of his confidence to occupy the seat. The first respondent Dr. Hazura Singh was, therefore, put up by him as his dummy. This Dr. Hazura Singh, as we find, had no public life to his credit. In fact he was almost a stranger to the people of Faridkot State having come to Faridkot for the first time about February, 1947 from Jullunder in the Punjab to take up service under the Raja in which he is still continuing as Medical Officer In-charge of the Raja's private Balbir Hospital. We cannot conceive of this servant of the Raja thinking of standing for election independently in opposition to his master or of his getting elected against the nominees of the two major political parties, the Congress and the Akali Dal with all the backing of their organizations, without the active support of the Raja in his election. The Raja's assistance could, however, help him to secure the votes of the still numerous adherents of the Raja. His successful election is looked upon by the political parties as a great blow to their activities and prestige, and in this realisation of the common danger we find the Congress party represented by the petitioner and the Akali Party represented by the 4th respondent Karnail Singh joining their forces and both working vehemently in prosecuting this petition, though elsewhere we see the spectacle of men of the Akali party being absolutely at logger heads with and functioning as unrelenting rivals of the Congress.

6. Proceeding to the consideration of the issues, we find on issue 1 that the petitioner was entitled to present the petition. The electoral roll shows that his name is at serial No. 3911 in the town of Faridkot which entitled him under section 81 of the R.P. Act 1951 to present the petition. The contesting respondents disputed even this statement in the petition and, therefore, the issue was raised.

7. *Issues 2, 3 and 4.*—We find that this election was wholly void because of the improper rejection of the four nominations in question—Gyani Zail Singh's name is entered in the electoral roll at serial No. 383 in the electoral area 7 Sandhwan Village of Kot Kapura Jaitu Constituency while he was seeking to stand for Faridkot Constituency. In the nomination paper the Faridkot Constituency was properly mentioned in item 1. The entries in items 7 and 8 together required information to be given about the Constituency in which his name appeared in the electoral roll and the serial number in it which according to the definition in R. 2(1)(d) of the R.P. (Conduct of Elections and Election Petitions) Rules, 1951, would require mention of the electoral area as well. All this information including the name of the Constituency was grouped together in item 8 though the mention of the Kotkapura Jaitu Constituency should properly have come according to the headings of the columns in the form against item 7. Against item 7 evidently through a clerical error "Faridkot" was noted. For this error of writing Faridkot against item 7 the nomination paper came to be rejected. The Returning Officer opined "It is a material error cutting at the root and cannot be considered to be a technical or clerical error as he is nowhere a voter in Faridkot Constituency".

8. As we have said items 7 and 8 required full information to be furnished as would enable the Returning Officer to trace out the entry of the candidate's name in the electoral roll, to be satisfied of his identity and of his eligibility as a registered voter in the PEPSU State for seeking election in one of the Constituencies of the State Assembly. When all this information was stated against item No. 8 the Returning Officer could at once know which electoral roll exactly he must look up to find the serial number of the elector. If any confusion was likely to arise from the entry 'Faridkot' in item 7 which seemed to refer him to the electoral roll of Faridkot Constituency that would be immediately dispelled when he came to think of the particular electoral area—the roll of which he was required to refer to because when he looked to item 8 for this, he could find that it was really the roll of Kot-kapura Jaito Constituency and not Faridkot which he had to look into. Thus the doubt arising which would be momentary could be removed immediately without the necessity of any elaborate search or any inquiry at all. We cannot view the entry in item 7 as anything worse than a clerical error and since it was possible for the Returning Officer to know without any effort or delay the correct information because the candidate himself had given it in the same place just in the line below, the error must be regarded as technical and not of substantial character. This is the test applied in numerous

cases for determining whether the error is to be regarded as material or only as technical which is not of substantial character. We only refer to the cases reported at page 247 of Doabia's Indian Election Cases Vol. I and page 903 Government of India Gazette Extraordinary Vol. No. 150. We think the error in this case to be only technical and the rejection of the nomination to have consequently been improper.

9. The nomination papers of the respondents 12, 13 and 14 were rejected on the one ground namely that these persons were on the list of assessors prepared under the Criminal Procedure Code for sitting with the Sessions Court which in the view of the Returning Officer disqualifyed them as holders of an office of profit under the State Government. This view of the Returning Officer is in our opinion wrong. We may only refer to Bhopal Election Tribunal's decision (Bejay Singh Vs. Narbda Charan Lal and others) published in Gazette of India—Extraordinary dated 6th January 1953 at page 29 in which the point has been considered with great thoroughness and ability and the finding reached that an assessor is not the holder of an office of profit under any Government. We are in agreement with all that the learned Tribunal has stated. Similar view has been taken by two other Tribunals (by Barnala Tribunal in Faqir Chand Vs. Pritam Singh published in Government of India Gazette dated 14th July 1953 and in Ishar Singh Chahal Vs. Kanwar Manjit Inder Singh published in Government of India Gazette dated 1st July 1953 and by Kotah Election Tribunal in Natwar Lal Vs. Bhartinder Singh published in Gazette of India Extraordinary dated 1st May 1953) these being cases in which the assessors received small amounts from the courts to recompense them for the out of pocket expenses on days of attendance in Sessions Court. Even such payment was considered not to render the appointment an office of profit. We find that these three nominations also were improperly rejected.

10. Improper rejection of nominations raise a presumption that the election is materially affected thereby. Nothing has been referred to in this case which could be considered to rebut the presumption. We, therefore, find that this election has to be declared as wholly void due to improper rejection of nominations.

11. Before proceeding to deal with the remaining issues one by one, we must state that we have definitely come to the conclusion that this election was in fact run by the Raja from start to finish and that Dr. Hazura Singh was literally and in the fullest sense Raja's dummy. Every necessary arrangement in connection with the election had been made by the Raja's men. We have formed this view upon a consideration of the evidence of Dr. Hazura Singh himself as R.W. 62 and upon an examination of the account books of Raja's Modikhana otherwise called General stores regarding issues of food stuffs and petrol as have been produced before us as also upon scrutiny of the doctor's return of election expenses and the register which he has produced as his account book of such expenses. We are convinced that the Doctor did practically nothing to advance his election and that when he filed his nomination paper it was at the instance of the Raja and for aggrandizement of his ambition to have his dummy (if he was not himself allowed to seek election) rather than suffer any political organization to make head way by getting its nominee returned in the election. As we have already said we are unable to conceive that the Doctor as servant of the Raja could have thought of standing up for election independently when the Raja himself was anxious to fight the election and for that purpose had filed his nomination paper. The proposer and the seconder to the Doctor's nomination paper were two servants of the Raja. There is no entry about the security deposit of Rs. 250 in the Doctor's account of election expenses in which register all other expenses are noted. This deposit is noted at the end as a stray entry after hundred of blank pages. If the money had gone from his pocket that should have been the first entry in the accounts. In fact the doctor admits in the witness-box that he was never writing any account of the expenses in connection with his election and the entries in the register have been written up by him according to the bills received by him after the election was over. The return itself was prepared from vouchers delivered by the Raja's establishment as relating to expenses incurred in connection with the election and for supplies of petrol and rations which had been made from the Raja's General Stores. We are inclined to think that not one of the bills produced with the election return had been in the doctor's custody. They were evidently paid by the Raja from his cash through his men or allowed to be adjusted by him where they relate to supplies from his own establishment. They were collected and handed over to the doctor just to make up the return of election expenses. The doctor never kept any man to write election account for the obvious reason that he had not to spend anything. He admits now that the men working for him in the election were mostly servants of the Raja whose services were available to him without any request on his part and without any

demand from him for their wages. The Raja's vehicles were run all throughout in connection with his election and not only services of the Raja's drivers were available to him alongwith the vehicles without payment, and even the petrol was being filled in them from Raja's stores. Whatever rations and food stuffs were required were all supplied from the Raja's Modikhana direct to the places where they were to be used. The doctor's statement that he had been taking these from Modikhana to his residence and from there was sending out necessary quantity to each place is contradicted by entries in Modikhana books. It was only after the election was over and when time came for filing the return of election expenses that bills were prepared by the personal department of the Raja about the petrol supplies and issues from Modikhana. Even these were not delivered to Doctor Hazura Singh as they might have been if it had been intended that he should pay for them. The registers of bills produced from Modikhana show that whenever payment was to be made by the doctor the bills were delivered to him and his signatures were obtained. The bills relating to Doctor's election were however, submitted by the Modikhana office not to Dr. Hazura Singh but to the head of their department which clearly shows that the payments of the bills were not intended to be made by the doctor. The Modikhana has produced the requisitions of the doctor for supply of petrol and rations but a mere look at these is sufficient to convince any one that they were not written from day to day as these issues were being made but have been written up in one sitting from the entries in the Registers. The registers show the places to which the articles were sent directly and in case of petrol the vehicles in which this was filled and the names of their drivers. These details, however, do not find a place in the requisitions of the doctor which mention only the quantities. There was no application from the Doctor that he would stand in need of such things from the Raja's Modikhana for his election because infact he never wanted them. The doctor admits that he has his own private car which was never used for election for the obvious reason that he himself had no interest in his election. It was all a show for the Raja and the Raja was, therefore, to provide everything as found necessary and to foot the bills.

12 and 13. It is easy to imagine a number of items which must have been required in connection with the election but no expense on their account appears in the return of the doctor, showing that the items must have come from some other source than his own pocket. That other source could be the Raja alone. For instance without having some copies of the electoral roll, it is inconceivable to contest the election properly. The Doctor not having shown in his return the cost of purchasing such copies or other indispensable things in the election was hard put to explain where he got such things from. He has attempted a ridiculously absurd explanation that he made his children do the laborious and boring task of writing out two copies of the roll of the entire constituency and that these he used in connection with the election. Large quantity of paper that would be necessary for making such copies had not to be purchased because every kind of stationery which he had to use for their preparation and for writing the account register had already been lying in his house, having been purchased when and for what purpose he could not say. He never supplied the articles of stationery which the workers needed for their use at the Polling Stations nor supplied any milk for their tea or fuel for cooking their meals and did not know how they may have arranged for these. He presumes that village people may have provided such things gratis to the workers. We should be too simple and credulous to believe such evidence of the Doctor. We can only think of the greater probability of the alternative source that what ever other things were necessary besides those shown in the return were provided by the Raja if he had them or were paid for by the Raja's servants out of the Raja's money.

14. Though it is thus clear that the election of the Doctor was taken upon himself by the Raja as his exclusive responsibility and it was through his efforts that the doctor was enabled to get returned, all this would mean nothing and could not be objectionable unless we can find that any of the acts done amounted to commission of one or the other of the corrupt and illegal practice enumerated in Sections 123, 124 or 125 of the R.P. Act 1931. We find no difficulty in regarding the Raja as an agent of the doctor for everything done as adverted to above in furtherance of the doctor's election in view of the comprehensive definition of agent in section 79(a) of the R.P. Act which provides:

"Agent includes an election agent, a polling agent and a counting agent and any person who, on the trial of an election petition or of an offence with respect to any election is held to have acted as an agent in connection with the election with the knowledge or consent of the candidate".

15. Issue 5.—The petitioner produced a number of witnesses to say that the Raja continued to tour the constituency after the rejection of his own nomination and going to different villages during the period upto the dates for polling he addressed meetings urging upon his adherents to support Dr. Hazura Singh just in the same way as they would have supported him if he had been in the election. He is reported to have told them that if they helped the doctor to get returned the doctor would resign the seat at his bidding after some months and then in the bye-election, he would be enabled to seek election again and get returned through their support. The witnesses on the side of the respondent on the contrary would have us believe that the Raja though he had been very active in canvassing for himself till the time of the scrutiny of nominations, altogether stopped going out or addressing the moment his nomination paper was rejected and that after that it was Dr. Hazura Singh alone who started his feeble attempt at canvassing for himself by one visit to each of the villages named by the petitioner's witnesses. In view of Raja's keen interest in the success of Dr. Hazura Singh, as discussed above, we feel inclined to prefer the evidence led by the petitioner over that of the respondent, so far as the question of canvassing by the Raja for respondent No. 1 by making speeches is concerned.

16. Canvassing support for Dr. Hazura Singh by such statements does not amount to any corrupt practice and could not be objectionable. The petitioner stated in para 10 of the petition that this propaganda was coupled with a false statement about withdrawal of the congress candidate S. Sandhura Singh from the election. If this statement was in fact being made that would amount to corrupt practice specified in clause (5) of Section 123. In the particulars given in Annexure 'A' the petitioner mentioned specifically about two meetings in which such statement had been made one at Manisingh Wala village and the other at Mehmuna village, both addressed on the same day 14th January 1952. This would be just the day before these villages were to go to polls on the 15th January. Since no other meetings had been mentioned specifically with the necessary particulars of the place and date, we will ignore the evidence given about meetings addressed at other places for proof of this corrupt practice. P.W. 12 Ganga Singh and P.W. 15 Gurdial Singh are the two witnesses who speak about the meeting at Mehmuna while P.W. 13 Kartar Singh and P.W. 14 Kehar Singh depose about the meeting addressed at Manisingh Wala. According to these witnesses, however, the Mehmuna meeting was 12 days before polling and the Manisingh Wala meeting 10 days before. We may be prepared to accept that these witnesses were in fact stating about meetings on the same day in their respective villages and only loosely stated the day of the meeting with reference to the polling date. But they certainly intended to convey that the meetings referred to by them took place not on the day previous to the polling day but more than a week before. In this way there is a marked discrepancy between the allegations of the petitioner and the evidence of these witnesses which we cannot ignore. These two villages are only two miles apart. The candidate Sandhura Singh is himself resident of the village Manisingh Wala. Sandhura Singh never relaxed his efforts in canvassing which is evident also from the fact that he secured the second highest votes in the election. In these circumstances we find it difficult to believe that the Raja could have gone in these villages and stated about withdrawal of his candidature by Sandhura Singh without being contradicted by many adherents of Sandhura Singh in these villages. We cannot also believe that even the adherents of the Raja in these villages being in the know of the true facts regarding Sandhura Singh could be expected to believe such statement from the Raja. We accordingly find issue V in the negative.

17. Issue 6.—The maintenance of Jangers (Kitchens) for feeding voters would undoubtedly come within the corrupt practice of bribery specified in clause (1) of Section 123 because according to explanation appended to the section all forms of entertainments are included in the term 'gratification'. The petitioners' case is that such gratification was being offered for inducing the electors to vote for respondent No. 1. The respondents did not admit the allegations in para. 11 or annexure 'B' of the petition which they averred were wrong. In the particulars originally disclosed in the petition, only the following Jangers were mentioned:—

- (1) Qila Faridkot for about 4 months from October, 1951 to the end of January 1952 in charge of Modi Thaman Singh.
- (2) Near Cinema Hall Faridkot from 15th to 19th January, 1952 in charge of B. Gian Chand, Over-seer P.W.D.
- (3) At village Golewala from 15th to 20th January in charge of Munshi Chanan Ram.
- (4) At Sadiq village from 15th to 21st January in charge of Munshi Ram Langri.

There was also a general statement in para. 5 of the annexure 'B'. "Langers were arranged throughout the constituencies at all the polling stations by the agents of respondent No. 1".

18. Objections were raised on behalf of the respondent No. 1 to these particulars that they were incomplete in that under (1) specific dates had not been given; that about (2), (3) & (4) it was not stated in the annexure that any voters were fed at these, that no names of the voters fed at these langers were disclosed. About para. 5 the objection taken was that the names of the agents and those of the voters alleged to have been treated at these langers had not been given. The counsel for the Raja also supported these objections and asserted that the annexures were liable to be struck out altogether as being inadequate. The petitioner's counsel at this stage asserted that the particulars already stated were all that could be required or could be given and that he had no more particulars to give. The Tribunal heard the objections and ordered under sub-section (3) of Section 83 R.P. Act, 1951 that names of some voters who to the knowledge or information of the petitioner had been fed at each langer should be given. That instead of the very general allegation in para. 5 the petitioner should specify the other places of langers together with the necessary particulars about the dates and names. In pursuance of these directions the petitioner specified 'Bnagat Ram Hotel' in Faridkot town as another place which had been used for feeding voters during polling days at Faridkot and B. Gian Chand was mentioned as being the man in charge of such feeding. He also stated about a langer having been maintained for such purpose at village Pacca which was one of the polling stations, this being also maintained during polling days in charge of S. Jagir Singh a servant of the Raja

19. The witnesses on petitioner's side whose evidence we have to consider regarding the langer at Cinema Hall are P.W. 23 Gurbakhash Singh, P.W. 25 Lachhman Dass, P.W. 44 Devi Dayal, P.W. 45 Amar Singh, P.W. 46 Ajmer Singh, P.W. 51 Inder Singh and P.W. 52 Harbans Lal. On behalf of the respondents it is pointed out that this Cinema House is in such a public place that it could not have escaped notice of any one during the polling days when the whole town was agog and every adult in the town had to pass over this cinema house to reach the polling stations. It is also pointed out that the Cinema Hall is just opposite the residence of the Deputy Commissioner who was also the Returning Officer and that it is unimaginable that this corrupt practice of treating was being indulged in so publicly and no notice was taken by any one, not even by the officers at Faridkot. In the account-books of Modikhana no issue of rations for this kitchen at cinema appears and there is divergence in the evidence of the petitioner's witnesses whether arrangement for cooking food was also there. Some state that cooked food was being brought to this place from elsewhere and only served to the voters near the Cinema House. From where it was being brought is not definitely stated. If it was being brought from the Qila Langer, as stated by P.W. 51 then this arrangement at Cinema cannot be considered to be another instance of the corrupt practice apart from the Langer at Qila. On behalf of the respondents it is argued that the petitioner appears to have built up this story of Cinema Langer on the basis of voucher No. 5 in the return of election expenses which is in the name of B. Gian Chand for food purchased from Bhagat Ram's Hotel, and that when in the further particulars the story of a langer at Bhagat Ram's Hotel was given and B. Gian Chand's name was sought to be associated with it on the basis of this voucher No. 5 then evidence was procured to prove the existence of the Cinema langer independently of the source of food supply evidenced by the voucher and hence the divergence in the evidence of these witnesses. For the same reasons it is pointed out that there is no unanimity in the evidence of the petitioner's witnesses regarding the man who was in management of the Cinema Langer. P.W. 23 does not name any one as being incharge. P.W. 25 states that B. Gian Chand was incharge but apparently he could not have been both here and at Bhagat Ram's Hotel. P.W. 44, therefore does not name the person incharge of Cinema Langer but generally states that Raja's men were managing it. He names B. Gian Chand in connection with the Bhagat Ram's Hotel. P.W. 45's evidence is that Madan Mohan was in charge of Cinema Langer. P.W. 46 who does not give evidence regarding Bhagat Ram's Hotel mentions B. Gian Chand as being in charge at the Cinema House. According to P.W. 51 Raja's men of the Body-guard in their uniforms worked at this Langer. P.W. 52 has made a bald statement of having seen a langer at Cinema without naming any person who was seen incharge or stating from where food was being supplied there. We do not, therefore, feel impressed by this evidence and since we do not find any support from the Modikhana books to find supply of any rations for Cinema Langer, we find that maintenance of any langer at Cinema for feeding voters is not proved.

20. Regarding Bhagat Ram's hotel the petitioner's case is in our view rendered doubtful because of omission to mention about it in the petition and the allegations about it having come to be made after the counsel for the petitioner had definitely

stated that the petitioner was unable to particularise anything further than what had already been done in petition. Likewise about the Langer at Pacca we are inclined to view the allegation doubtfully because of the late stage when it came to be made. If the petitioner had information that voters were being taken to this eating house by B. Gian Chand and fed there in order to induce them to vote for Dr. Hazura Singh, the petitioner could not have been advised to omit it from the particulars in Annexure 'B' the more so when B. Gian Chand's name was to be associated with it since it would be an additional item for proving the other corrupt practice of procuring B. Gian Chand's assistance in furtherance of the prospects of the respondent No. 1's election.

21. We have considered the evidence given on petitioner's side on this point. Bhagat Ram's hotel is a shop of long standing in Faridkot Bazar, where meals may be purchased. P.W. 6 Mohan Singh who keeps a shoe shop in the same Bazar states that Gian Chand had been bringing voters in batches of five or ten and getting them served food at the hotel. To the same effect is evidence of P.W. 7 Sucha Singh who also keeps a shoe-maker's shop near the hotel. He says he had seen Sham Lal Dhobi, Harbans Lal Ghota and Lal Chand a drummer being taken to the hotel and fed. P.W. 21 Ram Parsad also makes a similar statement but without any details. He was polling agent of the Congress Candidate S. Sandhura Singh and so belongs to the petitioner's congress party. P.W. 23 Gurbakhsh Singh is another enthusiastic congress worker. He does not reside in Faridkot but says that he had come to Faridkot on the polling day and had seen langers at the three places in Faridkot including the feeding going on at this Bhagat Ram's hotel through B. Gian Chand. He wanted to take steps to put a stop to this corrupt practice by reporting to the Deputy Commissioner but not finding him at his residence since he was camping at Bhatinda during the polling days, he tried to contact the Assistant Commissioner but did not find him also in the house. He did not make any further attempt at contacting these or other officers nor sent them information by post regarding this mal-practice of treating witnessed by him. We should have expected him to do this and the omission leads us to doubt his having witnessed such feeding at Bhagat Ram's hotel. He has stated that Gugan Dass, who has his shop near the hotel and who is a Municipal Commissioner and Raja's adherent, met him beyond the hotel and had offered to him also a meal at Bhagat Ram's hotel only to give him a taste of the good food they were serving to the electors there on behalf of the Raja. Gugan Dass as P.W. 6 gives a lie to this story and we think it is unbelievable. P.W. 44 Devi Dayal says that he had seen B. Gian Chand was directly supervising the Cinema Langer. He mentions what is against the evidence of other witnesses that the Raja's men (evidently referring to others besides Gian Chand) were arranging to provide meals at Bhagat Ram's hotel. P.W. 52 is Harbans Lal Ghota mentioned by P.W. 7. He has stated that B. Gian Chand had taken him to the Polling station for exercising his vote.

22. That B. Gian Chand was connected with the purchase of articles of food from the Bhagat Ram's Hotel is evident from voucher No. 5 in the Respondent 1's return of election expenses. The voucher signed by the Hotel Proprietor details the quantities of the named articles of food purchased during the polling days and receipt of their value Rs. 75/12/3 from B. Gian Chand. As we will have occasion to point out hereafter we have no doubt that this B. Gian Chand mentioned in the voucher is no other person than B. Gian Chand Over-seer P.W.D. referred to by the petitioner though as P.W. 3 he has denied his connection with the election in this or the other ways. We think the explanation of this voucher given on behalf of the respondents is quite unsatisfactory. The Petitioner was trying to make use of it as an item of evidence to prove commission of two corrupt practices namely:

- (i) that the articles of food evidenced by it had been consumed by electors taken to the hotel by B. Gian Chand;
- (ii) that B. Gian Chand though a Government servant had generally assisted in connection with the election.

The respondents tried to dissociate the document from either by producing evidence to show that these articles of food were being brought for feeding workers in connection with the election and that it was not the Over-seer B. Gian Chand who procured this food from the hotel. If the workers were taken to the hotel and fed there and the voucher relates to such expense then the item would surely not amount to "treating" i.e. the corrupt practice "bribery" as defined in clause (i) of Section 123. The second part of the explanation appended to the section would exclude the payment in that case from being termed gratification. That part reads:

"but it does not include the payment of any expenses *bona fide* incurred as or for the purpose of any election and duly entered in the return of election expenses referred to in Section 78".

If, however, B. Gian Chand took the workers to the hotel got them fed there, settled the hotel bill and made payment, he could be held to have been assisting in the election and such assistance can be evidence of corrupt practice under clause (8) of Section 123.

24. The respondents produced evidence of Jugal Kishore R.W. 5, Gugan Das R.W. 6, Beli Ram R.W. 17 and Kheri Mal R.W. 42 to prove that no men were being taken to Bhagat Ram's hotel for being fed. Gugan Das has also contradicted the statement of P.W. 23 Gurbax Singh as stated in para. 21 above. Though we have accepted the evidence of Gugan Dass for giving a lie to Gurbax Singh, we do not feel impressed by his statement or of the others when they want us to believe that on polling days no men were being taken to this hotel for feeding. Such evidence was given because it was realised that if it was admitted that workers in connection with the election were being taken there by B. Gian Chand for their meals, there may be risk of the tribunal inferring that voters were also fed there as stated by petitioner's witnesses. Therefore, evidence was produced of Gurbax Singh R.W. 9 and Mohan Singh R.W. 10 that articles of food were being taken from this Bhagat Ram's hotel by Mohan Singh to the camp of the respondent No. 1 near the polling stations and the workers about 35 or 36 in number were served their meals in that camp. Gurbax Singh himself did not go to the hotel but only served food which according to him Mohan Singh used to supply. Mohan Singh also a Municipal Commissioner of Faridkot wants us to believe that he used to bring the whole quantity of Rotis, cooked vegetables and liquid dal for these 35 men on his cycle daily from the hotel. Even on polling days Raja's trucks were out for use in the elections as appears from the admitted issues of petrol for those vehicles. If the vehicles were not being used for conveyance of voters, their use for conveyance of food stuff for the workers was not prohibited. A vehicle being thus available, we can only regard Mohan Singh's evidence as being ludicrously absurd. Mohan Singh does not mention having taken articles like curd and pickles which are also items included in the hotel bill thus showing that Mohan Singh did not in fact take food articles from the hotel and they were in all probability consumed in the hotel itself. We also think that if this had been a bill for food supplied to voters the respondent No. 1 would not have been so indiscreet as to include the expense in the return of election expenses. Our conclusion on an appraisal of the evidence on both sides in conjunction with the fact that the petitioner introduced this allegation of feeding of voters at Bhagat Ram's Hotel as an after-thought, is that there was no feeding of voters at Bhagat Ram's hotel. We shall however deal with the question of the alleged assistance by B. Gian Chand in the election, as evidenced by the association of his name in voucher No. 5 when we consider issue No. 7.

24A. For the same reason we are not disposed to find it proved that there was any langer at Pacca for feeding the voters. When introducing the allegation of this langer at Pacca in the further particulars, the petitioner stated that it was maintained in charge of Jagir Singh a servant of the Raja. This Jagir Singh has given evidence as R.W. 16 and has denied that there was any arrangement at Pacca for feeding voters. Jagir Singh was polling agent of respondent No. 1 at Pacca Polling Station and it is perhaps in the light of this fact that the petitioner wanted him to be connected with the corrupt practice of 'treating' at the same place and then to show the aggravated nature of these corrupt practices by showing that Jagir Singh's real position was that of a servant of the State Government. Jagir Singh's name was not mentioned in Annexure 'C' in which names of Government servants whose assistance was procured in this election had been disclosed. We, therefore, do not find it necessary to determine whether Jagir Singh has been accepted or not after integration of Faridkot State, as a servant of the Government of PEPSU. The evidence produced on the petitioner's side does not make out that Jagir Singh was incharge of the Langer at Pacca. P.W. 30 Gurmukh Singh and P.W. 31 Ranjit Singh mention that Ghamanda Singh another servant of the Raja was incharge. P.W. 32 mentions Sardara Singh as being in charge. P.W. 33 Jagir Singh puts Ghamanda Singh and Sardara Singh as being in joint charge. P.W. 37 Sadhu Singh, P.W. 38 Bhajan Singh, P.W. 39 Hakam Singh and P.W. 42 Bakhshish Singh who also speak of this langer at Pacca do not state the name of any particular men being in charge. Some of them stated generally that Raja's men were offering food.

25. On the respondent's side a number of witnesses were produced to say that they did not see any langer at Pacca in the bara of Partap Singh and Inder Singh near the village pond which was named by the petitioner's witnesses as the place where the langer was located. From the Raja's Modikhana account register it has been pointed out to us that one maund wheat flour had been sent to Pacca on 10th January 1952 and again 4 maunds 20 seers on 14th January 1952 out of which however, 2 maunds 10 seers is shown to have been received back unconsumed. Thus in all 3 maunds 10 seers wheat flour is shown to have been consumed at

Pacca. Here we may mention that along with wheat flour other commodities which are essential for preparation of a common man's meal were also being issued in adequate proportion but the main article being the wheat flour and the practice being to consider the item of wheat flour only for estimating the number of persons that can be fed out of a given quantity, we make reference only to issue of wheat flour and not to other articles. The polling days for Pacca were 15th to 19th i.e., 5 days. Taking that half a seer of wheat flour is sufficient to give two square meals a day for one man this quantity of 3 maunds 10 seers would be sufficient for feeding atleast 50 men twice a day for 5 days. On behalf of the respondents in the initial stage of leading evidence in defence an attempt was made to say there only a few workers on behalf of Dr. Hazura Singh at each polling station. This was being so stated to counter the petitioner's allegation that a large number of the Raja's servants had been working in connection with respondent No. 1's election. It seems to have been realised in the subsequent stages of the defence that mere denial of the maintenance of langars at the places named by the petitioner will not be sufficient because of the large quantities of food rations sent out to those places. The explanation was, therefore, offered that the kitchens at the places referred to by the petitioner's witnesses were not for feeding voters but only for feeding workers. Dr. Hazura Singh in his evidence as R.W. 62 tried hard to reconcile the two positions namely the attempt at minimising the Raja's assistance in his election and the suggestion that the large quantities of rations sent to the polling stations were not for feeding voters but only to feed the men who worked in his election. He, therefore, first stated that he had only 12 or 13 men working for him at Pacca including three of Raja's men who worked as his polling agents. Further on in his evidence he stated that about 100 men in all were working for him during the polling days out of whom about 25 worked at Faridkot. Simultaneously there was polling at Pacca and Sadiq also and if according to the doctor the remaining 75 workers were distributed between these two polling stations the number at each place would be 35 to 40. At Faridkot according to R.W. 9 and R.W. 10, the number of workers was 35 to 36. The doctor may, therefore, be still wrong in his total of workers being only 100 and the number at Pacca and Sadiq may well be fifty or more at each place. In this way it is not improbable that all this quantity of wheat flour consumed at Pacca was consumed by the doctor's workers only—the workers would have to be fed not only on the polling days but an extra day or two on either side in the process of setting up the camp at the polling station and then winding it up after the polling was over there. We think the respondent No. 1 would not have shown the expenditure of this quantity of ration in his return. If it had been used even in part for feeding voters. We have reason to believe that there was arrangement at the polling stations for feeding the workers only and in respect of Pacca we do not feel impressed by the petitioner's witnesses to find that any voters were fed there.

26. About Golewala and Sadiq Langars also for the same reasons we come to the conclusion that the arrangement for feeding made there was for the workers and is not proved to have been for feeding voters. To Golewala 4½ maunds of wheat flour had been sent on 7th January 1952, according to Modikhana Register. The polling dates there were 21st, 22nd and 23rd January and on these days according to the petitioner his witnesses Diwan Chand P.W. 8, Sandhu Singh P.W. 28, Ganda Singh P.W. 29, Bhupinder Singh P.W. 41 and Shivinder Singh P.W. 50 had witnessed feeding of the voters. The last named states that he himself was served food there. The dates of this Langar as stated in the particulars were 15th to 20th January i.e. before the polling days for Golewala. When during arguments this inconsistency was pointed out by the respondent's counsel, an attempt was made by the petitioner's counsel to urge that 20th had been a typographical error for '29th' which was intended to be stated. We do not feel disposed to accept this explanation and the variation attempted at the last stage. The proof which is requisite for establishing a corrupt practice is the same as would be considered sufficient in a criminal court to establish the charge of a criminal offence. Any deviation between the particulars of the charge, and the evidence will not be acceptable as establishing the charge. In this case there is divergence on another point also namely of the name of the Raja's man in charge. In particulars Munshi Chanan Ram is mentioned but according to P.W. 28 and P.W. 50 the man in charge was Bhag Singh while P.W. 41 has named Ghambard Singh as being in charge. P.W. 29 mentioned Ghambard Singh for bringing voters in truck from their villages and of serving liquor to them in the langar. We cannot view these discrepancies as being inconsequential. If the respondent No. 1 had been provided with a host of workers by the Raja, even the 4½ maunds of wheat flour could be consumed by them from the 7th January when they appear to have taken the supply from Modikhana till after the polling days i.e. during the period of not less than a fortnight.

27. To Sadiq 2 maunds 10 seers of wheat flour was taken on 9th January 1952 and there was again a supply of 4½ maunds on 14th January 1952 out of which, however, 2½ maunds was returned as unconsumed. The polling dates were 15th, 16th and 17th January and so the 4 maunds 10 seers would seem to have been consumed in about 10 days time during which the workers may have stayed there and thus would not seem excessive if about 40 workers had to be fed those 10 days. The dates for this langar given by the petitioner are 15th to 21st January and the Incharge is said to have been Munshi Ram Langri of the Raja's culinary establishment. If the Langar was intended for feeding the electors only, it is not understandable why it should have continued for 4 days after the polls closed at Sadiq on the 17th. Not one of the petitioner's witnesses P.W. 5 Lal Singh, P.W. 10 Joginder Singh, P.W. 11 Mool Chand or P.W. 34 Mohinder Singh named Munshi Ram as being incharge. In fact Mul Chand named two altogether different men, Tirkha Ram and Faqir Chand as being in charge while the others could not name any person at all. P.W. 24 Gurnam Singh Tir himself a candidate at the election stated that he did not see any langar at Sadiq for feeding voters. If there had been one, he as a candidate could not have remained ignorant of its existence or failed to make a grievance of it. An attempt was made to undo the effect of his evidence by producing his polling agent at Sadiq Mohinder Singh P.W. 34 to say that Gurnam Singh himself never visited Sadiq during polling days. Such evidence cannot inspire belief. There was no doubt a kitchen establishment in Uttam Singh's Bara at Sadiq but we think it was meant for workers of respondent No. 1 and is not proved to have been for feeding voters. We do not think we can find this proved because of the statements of Respondent's own witnesses Kishan Singh R.W. 50 and Karnail Singh R.W. 51. The former showed open hostility to the respondents by his *volte face* after entering the witness-box in respondents' defence. Karnail Singh has stated that he had seen the workers issuing identity chits to some voters in Uttam Singh's bara and some motor vehicles drawn up there. This cannot lead to inference that voters were being fed there also or that the vehicles were for conveyance of voters.

28. We have thus considered about all the other langars which are the subject of issue No. VI except the langar at Faridkot which the petitioner alleged was maintained in Qila Faridkot or Qila Mubarik as it is sometimes referred to, for a period of well-nigh four months during election time. About this langar we will record our finding in the order under Section 99 of the R.P. Act which we propose to give separately.

29. Issue No. 7.—The petitioner produced no evidence about assistance in the election of respondent No. 1 by Lady Doctor Shrimati Harnam Kaur the respondent's wife who is serving the State Government. Not is there any evidence regarding assistance by Sher Singh of Hissar who as Patwari would be in the class of persons serving the State Government by virtue of explanation (b) under clause (8) to Section 123. Some evidence has been produced regarding Arjan Singh Lambardar of Faridkot but that to our mind is not sufficient to prove that Arjan Singh rendered assistance in the election. P.W. 9 Kartar Singh and P.W. 17 Bakhshish Singh state that Arjan Singh approached them individually and canvassed for Dr. Hazura Singh. There is no evidence to corroborate about Arjan Singh's visit to either of them. Kartar Singh appears to be a man with leanings towards the Congress and was on his own admission an active supporter of the Congress candidate S. Sandhura Singh in this election. It is difficult to believe that with this information about Kartar Singh's sympathies, Arjan Singh might have thought of canvassing him to vote for Dr. Hazura Singh. According to these witnesses they themselves had told the petitioner about Arjan Singh's visit to them about 2 months before they gave evidence on 23rd July, 1952. This was to explain why in the further particulars the petitioner was enabled to give names of these witnesses as the persons canvassed though his counsel had previously stated that the petitioner was not in a position to give any further particulars. This shows that at the time he made allegation in the petition about Arjan Singh Lambardar's assistance, he had not the canvassing of these two witnesses in mind. We are not impressed by the evidence of these two witnesses and find that procuring the assistance of Arjan Singh Lambardar of Faridkot in the election is not proved.

30. P.W. 40 Ajai Singh and P.W. 47 Pritam Singh, were produced to prove assistance of Inder Singh Lambardar of Ghugiana. In the further particulars the petitioner mentioned that Inder Singh had canvassed Arjan Singh Lambardar of Ghugiana and other voters on the morning of 23rd January 1952. Ajai Singh who is Akali Party worker and was also polling agent of the Akali Party candidate Karnail Singh at Pacca Polling Station states that on the night between 22nd and 23rd January he had gone to the house of Arjan Singh of Ghugiana with a view to obtain his assistance in canvassing for the Akali Party Candidate.

In the morning of the 23rd however Inder Singh came and took Arjan Singh with him telling that Arjan Singh was wanted by the Raja who was camping in that village at the time. Arjan Singh accordingly accompanied Inder Singh and later returning to his house told Ajaib Singh that he would not be helping the Akali Party as he had previously promised him (Ajaib Singh). This in no way proves that Inder Singh had canvassed Arjan Singh to support Dr. Hazura Singh. P.W. 47's evidence is that on 23rd during polling hours, Arjan Singh accompanied by Inder Singh appeared before the Raja with 40 electors (evidently brought up according to the witness to vote for Dr. Hazura Singh.) The Raja patted Arjan Singh with approbation and took the voters in Hazura Singh's camp. Joginder Singh P.W. 43 his natural brother was also present at the time but Joginder Singh makes no mention of this incident. This evidence also does not prove any assistance to have been rendered by Inder Singh in the election. At its face value, only means that perhaps Inder Singh had persuaded Arjan Singh to withdraw his promise of assistance to Akali Party and to actively for Dr. Hazura Singh and Arjan Singh did accordingly canvass and induce 40 men to vote for Hazura Singh. The petitioner had not, however, pleaded a corrupt practice by reason of the assistance given by Arjan Singh of Ghugiana and there is no direct evidence about Inder Singh of Ghugiana having rendered assistance by canvassing voters as was alleged in the particulars.

31. The petitioners' main target was B. Gian Chand Overseer P.W.D.'s assistance in the election and this we find is proved beyond doubt. The particulars stated about his assistance were that he was incharge of the langars as mentioned in Annexure B, that he had been canvassing amongst voters and that he had arranged for setting up of tents for respondent No. 1's camps at Polling Stations. This B. Gian Chand is himself a Jain. He was appointed in the Public Works Department of Faridkot State but at the time of integration of the State in the PEPSU, he was working in the personal estate of the Raja. His services have been integrated as a servant of the State Government in the rank of an Overseer in the State P.W.D. The Raja being however desirous to have B. Gian Chand's services available in his Civil List, he has been allowed to continue with the Raja and shown as being on deputation, the Raja having agreed to pay his salary and pension contribution during the period he wants his services. The respondents replied very curtly to the petitioner's allegations in para 12 of the petition and to those in the Annexure 'C' relating to corrupt practice under Section 123(8) by procuring assistance of these government servants. "Wrong" was the only word stated in reply to them. As this was understood to be a denial of even the status of B. Gian Chand as a person serving under the PEPSU Government, the petitioner called B. Gian Chand himself as P.W. 3 to state how he regarded himself whether in State Government service or otherwise. He could not of course deny himself the status of a servant of the State Government though on deputation but he took this opportunity to deny that he did any act at all in furtherance of the election. He was specifically questioned about the vouchers Nos. 5, 29 and 32 in the respondents' return of election expenses which are in the name of B. Gian Chand. He did not admit that he had obtained the articles detailed in them or made the payments. They were all in connection with the election and in his own interest and in the interest of the respondents he could not admit his association as a Government Servant in those acts. He was, however, unable to suggest who else bearing the name B. Gian Chand might have done them for Dr. Hazura Singh's election.

32. We are constrained to remark that in taking this attitude B. Gian Chand has not made a true statement. As we have already said, the election was entirely the Raja's affair and was managed by the Raja and Dr. Hazura Singh did practically nothing. This shows the greater probability that B. Gian Chand as the Raja's employe with a good executive capacity as an Overseer should have been ordered by the Raja to work in the election, than that Dr. Hazura Singh should have selected a very doubtful and at best a casual visitor like the other Gian Chand Jain, R.W. 1 to make two payments under the two vouchers Nos. 5 and 29 which happen to bear the name of B. Gian Chand. We do not believe that Dr. Hazura Singh made any payment at all out of his pocket and we were not at all impressed by the statements of R.W. 1 and R.W. 62 that the doctor had sent out this R.W. 1 Gian Chand to buy him 3 gallons petrol under voucher No. 29 or to pay the bill of Bhagat Ram Hotel under voucher No. 5 when Gian Chand R.W. 1 happened to call on the doctor to request him to attend on his ailing brother. We have positive evidence to prove that B. Gian Chand Overseer worked very zealously in the election as may be expected of a faithful servant who regards the Raja as his master and the election as the Raja's affair.

33. P.W. 45 Amar Singh has stated that B. Gian Chand was doing all kind of work in the election including the bringing in of voters and he was doing every work very actively. We cannot discredit this statement of Amar Singh only because he had worked as Polling Agent of the Congress Candidate Sandhura Singh. He impressed us as being quite frank in his evidence not trying to conceal anything even though it was against his own party. He has thus admitted that at Raniawala Polling Station upon a complaint of the doctor's polling agent, the police had stopped and taken into custody an unregistered lorry as being used for conveyance of voters by congress people, and that upon seizure some *laddus* and congress flags were found in that lorry. We also find that during election days Gian Chand Overseer was bustling about in a jeep for work in connection with the election and Bakhtawar Singh, P.W. 36 has stated that he had seen Gian Chand taking petrol in that jeep from the petrol pump. He apparently was referring to the purchase of petrol under voucher No. 29 which according to the Salesman Dhan Ram P.W. 49 who issued the voucher was taken by B. Gian Chand, Overseer. This salesman had known B. Gian Chand and could not make any mistake about the man whose name he mentioned in the voucher as customer. He has stated that he did not know any other man in Faridkot of the name of Gian Chand and had not known R.W. 1. Nothing could be elicited in his cross examination to show that he could not be impartial in giving his evidence. We feel convinced, despite the statements of R.W. 1 and R.W. 62, that this petrol for election work under voucher No. 29 was brought by B. Gian Chand, Overseer.

34. About Voucher No. 5 relating to payment of Bhagat Ram. Hotel Bill for articles of food also we are convinced that it was B. Gian Chand Overseer who made that payment. We have already found that it was Overseer Gian Chand who was taking men (though we infer that they were only workers of Dr. Hazura Singh) to give them meals at Bhagat Ram Hotel and naturally the hotel proprietor made out the bill in B. Gian Chand's name and presumably the payment was made by B. Gian Chand. Dr. Hazura Singh does not say that he went to the hotel and placed order and Mohan Singh, R.W. 10 does not say that he placed the order though he wanted us to believe, what we have not believed that he was taking delivery of the articles of food from this hotel. In the common course of business, the bill would be made out in the name of the person who order the goods, and we cannot accept the explanation of R.W. 1 and R.W. 62 that the hotel keeper mentioned R.W. 1's name in the bill simply because he went as an errand body of Dr. Hazura Singh to pay the dues. The arrangement of feeding of workers was thus made by Overseer Gian Chand.

35. At polling stations outside Faridkot town, camps were prepared for Dr. Hazura Singh by pitching of tents and Shamianas. This type of work was in the special line of Overseer Gian Chand and we can easily believe the evidence that he was deputed to make such arrangements. Shamianas and tents were hired from the Gandhi Tent House of Faridkot and voucher No. 32 relating to the hiring of these is in the name of "B. Gian Chand Ji". Bhupinder Singh P.W. 11 saw Overseer Gian Chand getting the tents and Shamianas loaded in a truck at Gandhi Tent House which was ordered to proceed to Pacca. At Pacca Ajaib Singh P.W. 40 found that tents and Shamianas had been brought in truck by B. Gian Chand who got them pitched under his supervision by Raja's servants. No attempt has been made on behalf of the respondents to get out of this evidence presumably because Gian Chand R.W. 1 could not take courage to pose in the role of "B. Gian Chand Ji" as a hirer of tents and Shamianas from the Gandhi Tent House or of an Overseer supervising their pitching at outlying polling stations.

36. We have no hesitation in finding that all these acts were done by B. Gian Chand Overseer and none out of them by Gian Chand R.W. 1 also that they were all done for furtherance of the prospects of the election of respondent No. 1. The assistance so rendered by B. Gian Chand unquestionably under orders of the Raja would amount to corrupt practice under clause (8) of Section 123 if we can find that B. Gian Chand, though at the time on deputation with the Raja, was still a person serving the Government of the PEPSU State within the meaning of that clause. We think that "serving the Government" is not used in that clause in the sense of actually working for the Government at the time but only in contradistinction to a person who has retired from or resigned the service. So an employee while on leave or under suspension would still be serving the Government, so as to rule out his assistance in election under this clause. We do not see that being on deputation should make any real difference in the position. The intention of the legislature appears to be that those who have chosen to serve any Government whether of the Union or of any State should not even remotely associate in the political life except

for the giving of vote at an election. Articles 102 and 191 of the Constitution disqualify a Government servant for membership of Legislatures and it cannot be that the disqualification is suspended while the Government servant is placed on deputation to work for an institution which is not a link of the Government. Procuring assistance of a Government servant is specified as a corrupt practice with the object of keeping Government services entirely aloof from the political life of the country. Government servants themselves are, under the rules relating to their discipline and conduct not allowed to take part in politics and the candidates at election are debarred by this clause from taking any assistance in any form from any servant of any Government in India irrespective of whether his position is likely to be valuable in favourably influencing the prospects of the candidate's election or not. Such total prohibition seems to be enacted with the idea that the power and prestige which go with the employment in Government service should not be available to any candidate at election even in the remotest degree. The clause, therefore, prohibits assistance in election even by a person serving in altogether a different state. We cannot think of B. Gian Chand being beyond the pale of exercising influence in Faridkot as a person in service of PEPSU Government or being above the Government servant's conduct rules while on deputation with the Raja. It is another matter that his conduct may not be viewed harshly under the Government servants conduct rules considering that having been ordered to serve under the Raja, he could not be expected to refuse to help respondent I, a nominee of his master. Respondent No. I's procuring his assistance in the election must amount to corrupt practice and we find that corrupt practice under Section 123(8) is established in respect of assistance given by B. Gian Chand Over-seer alone.

37. Issue No. 8.—Regarding conveyance of electors the petitioner when called upon, gave details in further particulars of the vehicles used at each polling station. These are stated in the amended annexure (E). According to them the petitioner undertook to prove such use of vehicles at three polling stations only namely Pacca, Sadiq and Jand Sahib. At Pacca he mentioned four trucks, one command car, and one station wagon as having been used on 15th January and three trucks and one Jeep on the 17th January. At Sadiq he mentioned two jeeps, two trucks and one tank on the 17th. At Jand Sahib use of vehicles for conveyance of voters is shown only on 23rd January, but on that day five trucks, one command car, one jeep and two tanks are shown to have been put to such use. The registration numbers of these vehicles have been given and we may not doubt that such vehicles were there as these polling stations for in voucher No. (35) in the return of Respondent No. 1 there is mention of such vehicles having been taken out with small supplies of petrol a day or two before these dates. The question, however, remains whether these vehicles were used for conveyance of electors, because it is now accepted on behalf of the respondents that Raja's vehicles were being freely used for work in connection with the election. Accordingly the petrol supplied in them has been accounted for in the return. But it is urged that the use was for legitimate purposes only. The smaller quantities of petrol shown in voucher No 35 as filled in these vehicles would not ensure the making of many trips by them. The petitioner has referred us to three items of issue of petrol in bulk which appear in the voucher Nos. 34 and 35. Thus 20 gallons is shown to have been sent to Pacca on 14th January 1952, thirty gallons to Golewala and forty gallons to Sadiq on 9th January 1952, and it is urged that these stocks had been built up at those places for the many trips to be made on polling days. In the particulars the petitioner did not allege use of vehicles at Golewala for conveyance of electors but it was sought to explain that petrol was stocked at Golewala for use at Jand Sahib Polling Station. We think we should not infer anything in support of corrupt practice from the mere fact that these stocks of petrol were kept at the three places. They might well have been needed for keeping these heavy vehicles in running on polling days for use of the workers only for going to various places to urge the electors to go out for exercising their votes.

38. On the petitioner's side eight witnesses spoke about voters being taken to Pacca, five about conveyance to Sadiq and one P.W. (35) about their conveyance to Jand Sahib. On the respondent's side a number of people were produced to say about each polling station that no vehicles were provided for conveyance of electors and the people went from their villages to the polling station either on foot or in their own or in their friend's transport. We cannot make anything of the evidence of such witnesses on either side because the witnesses in a case like this generally depose in a partisan spirit and they may even state of facts they have not witnessed when they find that they cannot be contradicted on their statements. The witnesses on the respondent's side have

gone to the length of stating that they did not see any motor vehicles at all at the polling stations though there is no denying now on behalf of the respondents that vehicles as mentioned by the petitioner were kept at the polling stations, though for legitimate use.

39. The onus of proving this corrupt practice was necessarily on the petitioner and this we cannot find discharged by the evidence of witnesses examined on his side. The large expenditure on petrol is apparent from the fact that the Raja was using all his resources in this election for canvassing which would be quite legitimate. Accordingly all the petrol used for the vehicles whether taken from the Raja's store or purchased from outside had been duly accounted for in the return. We cannot think of the respondents flouting the law in an open manner in this election. If the electors had been brought in vehicles so openly we should have expected some one out of the numerous rival candidates or their supporters to have lodged protest or complaint at the time. This becomes all the more significant when we find in the evidence of the petitioner's own witness Amar Singh P.W. (45) that on a complaint of the respondent No. 1's polling agent that congressmen were using a truck for conveyance of voters, the police had seized a vehicle there and then. We find that no corrupt practice under Section 123(6) R.P. Act is established.

40. *Issue No. 9.*—The objections raised to the return of election expenses of respondent No. 1 are detailed in annexure 'G'. We have no doubt that some of the objections taken are weighty in as much as the respondent No. 1 received the services of quite a large number of the Raja's servants and use of his large fleet of vehicles with their drivers but has not accounted for the wages of the men or the hire of such vehicles in the return. So also he has not accounted for the cost of copies of electoral rolls and stationery without which the election could not have been run. The petitioner has not, however, made any statement nor given any evidence on which we could determine what the expenses on such account were or might have been, which may be found to be omitted from the return. The allegation about the making of a false return of election expenses was made not as a ground on which the election of respondent No. 1 could be set aside but only to get a finding of the minor corrupt practice under Section 124(4) of the R.P. Act in order to bring about disqualification of the respondent. Since we have already found commission of one major corrupt practice under Section 123(8) proved which will entail disqualification of respondent No. 1 under Section 140 R.P. Act, we do not find it necessary to discuss about this minor corrupt practice relating to return of election expenses.

41. *Issue No. 10.*—As stated in para 10 above our order under Section 98 of the R.P. Act, is that the general election of January 1952 in the Faridkot Constituency of the PEPSU Legislative Assembly was wholly void. Our order under Section 99 of the Act, we now proceed to record separately.

42. In concluding we wish to record our appreciation of the help received by us from the counsel on both sides Shri M. L. Kapur for the petitioner and Shri M. L. Kalia and Shri K. C. Puri for the respondents.

The 28th September, 1953.

(Sd.) V. B. SARWATE, Chairman.

(Sd.) KARTAR SINGH, Member.

(Sd.) JIA RAM SAXENA, Member.

ORDER UNDER SECTION 99 OF THE R.P. ACT.

Finding by S. Kartar Singh and Shri Jia Ram Saxena, Members of the Election Tribunal Kapurthala at Patiala.

Question of the feeding of voters at Qila Faridkot remains to be decided. In view of the fact that the allegations as to the existence of langars at Jubilee Cinema Faridkot, Bhagat Ram's Hotel, and at villages Golewala and Sadiq have been disbelieved, evidence relating to the alleged feeding of voters at Qila Mubarik should be viewed with caution.

In para 11 of the petition it is alleged that the offence of treating was committed on a very large scale, langars were established in Qila Faridkot both before and during the polling where meat, wine, and food were served to the voters of the constituency of which the details were given in the list marked 'B' attached to the petition. In the annexure 'B' para 1 runs as follows:—

"At Faridkot, in Qila Faridkot, respondent No. 1 and the respondent No. 11 established a big langar for about four months namely October 1951, to the end of January, 1952. Voters were fed there, and wine and

meat were served to the voters. The servants of respondent No. 11 managed the whole show and the respondent No. 11 spent money on it. The incharge of the langar was Modi Thaman Singh".

Objection was taken on behalf of the respondents that the particulars were vague. Counsel for the petitioner made a statement on 17th February 1953, saying that he had given fullest possible particulars in each annexure and no other particulars were necessary or could be given and none of the annexure required any amendment or addition. The matter was put in issue and the Tribunal by their order dated 22nd June 1953, called upon the petitioner to amend the list of particulars of corrupt practices alleged to have been committed at the election. Accordingly the petitioner put in the amended annexure 'B' on 24th June, 1953. In this amended annexure, the para added to para 1 of annexure 'B' runs as follows:—

"The treating was on mass scale and amongst those voters who actually were fed were:

1. Inder Singh refugee, Balbir Basti, Faridkot.
2. Sher Singh Dhaliwal, of Faridkot.
3. Shri Parkash Chand Gandhi, son of Shri Mathra Dass of Faridkot."

After hearing the arguments in this case on 18th August 1953, and subsequent dates we came to the conclusion that a notice should be issued to respondent No. 11 to show cause why he should not be named in the final order of the Tribunal as having committed the alleged corrupt practice of treating voters at Qila Faridkot during the election. The respondent No. 11 appeared through his counsel, cross-examined the witnesses named in our order and has laid both oral and documentary evidence in his defence. The main reason which led us to issue notice under Section 99 of the R.P. Act was that the Modikhana register of the respondent No. 11, brought on the record at a late stage of the proceedings showed that there was an abnormal increase in the issue of the Atta for the langar *Samadhan* (Langar Gariban) during the months of October 1951 to February 1952 and there was no evidence before us then to show what this increase was due to.

From the attendance Register of Langar Gariban now brought on the record by respondent No. 11, following facts have come to our notice.

The number of the destitutes as noted in the register is 106, 106, 106, 183, 183, 206, 213, 213, 206, 213, 104, 80 and 66 in the months of Har, Sawan, Bhadon, Assauj, Katik, Maghar, Poh, Magh, Phagan, Chet 2008 and Besakh, Jeth and Har of 2009. In Har 2008 the increase in the number of the destitutes is 38 which is due to the fact that they were allowed by the Controller in the absence of the Raja to Europe to be maintained, from the Langar. Out of these 16 were above 21 and 22 were below 21 years of age. In the month of Sawan 5 of the destitutes had left and 5 had been admitted in their place. Out of these 5, three were above 21 and 2 were below 21 years of age. In Bhadon 2008 three had left and 3 more were admitted. All these 3 were above 21 years of age. In Assauj when the Raja had returned from his European tour the new comers 73 in number were admitted under the orders of the Raja whom these persons had approached with a request that they being indigent should be maintained as an act of charity. The Raja was at first unwilling to admit them but when they appealed that he should be liberal in their admission in that when a subordinate of his i.e. the Controller could allow 38 persons to be admitted in his absence, they could reasonably expect greater generosity from the Raja himself. Accordingly he allowed them to be maintained from this Langar. Out of these 38 were over 21 and 35 were below this age. In Katik there was an increase of 25, of whom 15 were over 21 and 10 were under it. In Maghar there was an increase of 8 destitutes of whom 3 were above and 5 were below 21 years of age. In the month of Poh (December 15 to January 15) there was an increase of 1 only. It was in this month that the polling took place. Out of 213, the total number of destitutes in this month, 107 were above and 106 were below 21 years of age. In Magh the strength was 206 which showed a reduction by 7. In Phagan 7 new admissions represented the addition. Thus it will appear that there was an increase of 153 destitutes from the month of Har to the month of Maghar and out of these 79 were above and 74 were below 21 years of age.

It has been argued that this Attendance Register is not genuine but has been fabricated for this case. R.W. 64 Captain Harbhey Singh and other members of his Body-guard staff namely R.Ws. 65, 66, 67, 68, 69, 70, 71 and 74 who wrote the entries in the register from time to time, prove the entries in this register.

This register is a bound volume and is worn out by use and time. The very look of it bears the stamp of its genuineness. No sane person would ever think of keeping a regular record of the feeding of voters which can be easily used for establishing the commission of the major corrupt practice of bribery.

There is no denying the fact that the institution known as Langar Garibani had been in existence long before the last elections. Originally it was run in the building known as Samadhan (tombs of Raja's ancestors) and came to be transferred to the Qila Mubarak of the Raja in September 1949—vide Ex. R.3 which is a documentary evidence of undoubted nature.

Counsel for the petitioner urges that the large increase in the number of destitutes from Har 2008 and onwards as compared with the original number of destitutes maintained therein is due to the Raja's and his subordinate's anxiety to secure their votes to help him at the coming elections and commission of corrupt practice of bribery can safely be inferred against him. We do not up-hold his argument. If the underlying motive of the Raja was to secure votes by feeding them from this langar he would have permitted only those persons to be maintained from this institution who were above 21 years of age and who, if enrolled, could be competent to vote under the law and not any one else below this age. The facts given above contradict such a sinister motive. There is no evidence before us that all these persons maintained from this langar were voters on the list prepared for the constituency. Again there is no evidence that all or any one of them did exercise their right of vote in favour of the Raja's nominee at the elections. Nor is there the slightest evidence to indicate their presence in the camp respondent 1 at the time of polling. There is no evidence before us that the Raja directly or indirectly managed to attract such persons. No attempt has been made to convince us that any of the persons maintained in this langar was not really a destitute and was being fed simply to secure his vote. Unemployment and poverty are the greatest curse in India. Remedy to remove them is engaging the immediate attention of our Government. If the Raja so liked, he could have secured and maintained in his langar any number of adult destitutes in order to swell the number of his voters. From the above discussion it is highly unsafe to attribute the increase in the number of the destitutes to the Raja's manoeuvre to make sure of his nominees' success in the elections.

Another argument has been advanced by the counsel for the petitioner that those fed by this langar came to be allowed some *gur* and tea by way of their daily ration. This argument loses all its force when it is remembered that this was introduced in April, 1951 when elections were not in sight. It has been explained by Jagir Singh the Officer Incharge of Toshekhana and Deorhi Dharam Arath and who is also Incharge of this charitable langar that this extra indulgence was granted by the Raja on the representation of some opium eating destitutes of whom there is no dearth in this part of the country. This additional commodity of food and drink was discontinued after a year possibly because the person at whose instance this was allowed might have left the langar.

Lastly it has been urged that the budget allotment for the langar was raised from Rs. 6,000 to Rs. 16,000 during the year 2008 from which inference may be drawn as to the anxiety of the Raja to feed the increased number of voters maintained by this institution. Jagir Singh R.W. 16 incharge of the langar explains that he proposed the increased allotment in the budget by reason of new admissions. He also states that this increase of Rs. 10,000 in the allotment was not wholly spent but there was a saving of Rs. 4,000 out of it. In our view the proposal for the increase in budget was justified in view of the increased number of the destitutes. There could have been no saving at all if really the Raja or his subordinates meant to launch a propaganda to secure votes by feeding the electors. If the Raja wanted to spend any money on any corrupt practice it was unlikely that any provision would be made in the formal budget for the langar. He would have spent the amount from his private purse without creating any documentary evidence against himself.

Learned counsel for the respondents has also urged that this Tribunal is not barred from referring to other facts appearing in the evidence of the petitioner which goes to disprove the alleged commission of this corrupt practice attributed to respondent No. 11 and forming the subject matter of issue No. 6 merely because a notice has been issued to him under Section 99 of the R.P. Act, as the onus of establishing the charge of bribery continues on the petitioner throughout. Proceedings in such cases are of criminal nature as we have said before and in a criminal case the burden is always on the prosecutor (here the

petitioner) to prove the case against an accused person (here the respondent No. 11). It never shifts. We accordingly see force in his contention and take up the points pressed by him, in the light of evidence both oral and documentary adduced by the respondents under section 99 of the Act.

It has come out in evidence that only dal and dry roti have been distributed at this langar, three rotis for an adult and two for a minor at one meal which may or may not be sufficient to satisfy one's hunger. This speaks for itself. Such food cannot be deemed to be sufficiently sumptuous so as to attract ordinary voters who enjoy a square meal at their homes.

The allegation in the petition that meat and wine were served to the voters at the langar does not find support from any evidence on the record.

We have already said above that powerful and well organised political parties in Faridkot were bitterly opposed to the Raja. The institution of langar already existed at Faridkot. It appears that this fact provided a ready handle for levelling the charge of bribery against the Raja.

In the original annexure 'B' the practice of treating is described to have been going on since October, 1951 and lasted upto January, 1952. On the contrary the oral evidence of the petitioner discloses a different story. Inder Singh P.W. 51 has stated that this langar was started about 15 days before the polling commenced. Sunder Singh P.W. 4, Cheten Dev P.W. 16, Shiv Charan Dass P.W. 22 put this date some 20 days before the polling started while Devi Dayal P.W. 44 says that this was started a month before the polling. This at once knocks the bottom out of the allegation regarding this corrupt practice. The statements of these witnesses for the petitioner are obviously false. We have already held on the basis of unimpeachable evidence on the record that the langar at Qila has been in existence for a long time. It may also be pointed out in this connection that the statements of R.Ws. 2, 3, 4, 5, 6, 7, 16, 42 and 43 reveal that no langar was being maintained by the Raja for feeding the voters at Qila Mubarik.

The Raja was bitterly opposed by the political parties during the elections. Why was not this alleged major corrupt practice, openly resorted to, if true brought to the notice of any of the authorities on the spot? No explanation is forthcoming on this point. There was no love lost between the parties. The actual feeding, if done every day for months, could be proved by taking photograph at the time of the service of food which would have been the easiest method to prove this allegation.

The petitioner mentions the names of only 3 persons in the amended annexure 'B' cited above as treated at the langar. None of them has been produced before us, nor has any reliable evidence been produced by the petitioner to prove that these persons were fed at the langar. If the open feeding of voters in large numbers had gone on for months, the petitioner could have given scores of names of the voters actually fed at the langar.

Realising that the position taken up by the petitioner in the petition that this langar was being run in the Qila would not succeed as no body standing at the gate of the Qila could see the treating alleged to be done in the Darbar Hall inside. The petitioner has shifted his position and has produced evidence to show that this feeding was being done publicly outside the Qila. This by itself is sufficient to disprove the alleged treatment.

It is to be pointed out that the petitioner verified the petition, the original list of the particulars 'B' and the amended particulars of list 'B' from his personal knowledge but has not dared to enter the witness-box to make a statement on oath about the allegation made therein and to give an opportunity to the other side for cross-examination. This is a strong point which goes against him.

We hold that the petitioner has failed to prove the commission of this corrupt practice and thus there is no case for naming respondent 11 for this corrupt practice.

Respondent 1 is to be named for committing the corrupt practice of procuring assistance from Gian Chand, Overseer, a person serving the State Government as specified under Section 123(8) of the R.P. Act.

(Sd.) KARTAR SINGH, Member.

(Sd.) JIA RAM SAXENA, Member.

Finding and opinion recorded by Shri V. B. Sarwate, Chairman, Election Tribunal, Kapurthala at Patiala under Section 99, R.P. Act, 1951.

(Vide para. 28 of the above order).

I regret I find myself unable to agree with my learned colleagues as regards the finding to be recorded about the commission of corrupt practice by maintenance of a langar at Qila and about the persons to be named for the corrupt practices, even as I felt unable to agree with them about the necessity of issuing notices to the persons to be named where such persons are as respondents to the petition already before the Tribunal. The finding and order on the latter point were recorded on 1st September 1953 and these are reproduced as Annexure 'A' to this order. We were then agreed that two corrupt practices could be found to have been committed upon the evidence which had been placed before us by the parties during the trial. One of these was about the maintenance of this langar at Qila Faridkot for feeding of voters by the respondent No. 11, the Raja, as agent of respondent No. 1. It was also indicated in that order that the oral evidence on the petitioner's side which satisfied us about commission of that corrupt practice was of the witnesses P.Ws. 4, 5, 16, 21, 22, 44, 45, 51 and 52.

2. I concede that mention was made of these witnesses only to give an indication to the persons to whom notices may be issued to demand production of these witnesses only for further cross-examination and not the others out of the numerous lot who gave evidence on the side of the petitioner. That did not mean that we were impressed about the commission of this corrupt practice only upon the evidence of these witnesses and not upon any documentary evidence. The documentary evidence was not referred to in that order because such evidence was not to be allowed to be further tested by cross-examination under proviso (b) to Section 99. Indeed if we had been left to judge about commission of the corrupt practice by the evidence of these witnesses alone, I would have unhesitatingly found their evidence to be quite insufficient to bear out the charge. Not one of them spoke of his having seen the langar in the Qila during the whole period of four months from October 1951 to January 1952 as stated by the petitioner in the particulars given by him. They spoke about their knowledge of its existence during the polling days and for varying periods before polling also according as each one had opportunity to go to the Qila side before polling days. Many of them had stated that they had not gone inside the Qila to see the location of the langar but were enabled to say that it was there because they had either seen food served to the poor people outside the Qila gate or had seen some dinners coming out of the gate after finishing their meals. At that time we had also the evidence before us of Jagir Singh R.W. 16 a servant of the Raja that the Raja had formerly been maintaining a langar for feeding the destitute of Faridkot town at the place of memorials of his ancestor's—Samadhans—which was referred to as Samadha Langar and that this langar had been transferred to the Qila after integration of the State and was since being run in the Qila. He had also stated that the annual budget allotment for this langar was Rs. 6,000. Even at that time we had in this way the suggestion placed before us that what the petitioner's witnesses were referring to was this charitable institution of Samadha Langar where destitute were being fed in the traditional way and which they were trying to misrepresent as a langar for feeding of electors. We had also the evidence of witnesses like R.W. 2 a doctor and R.W. 6 a Municipal Commissioner of Faridkot who denied that there was any langar in the Qila at any time for feeding any elector or other persons and also the evidence of the respondents' witnesses Nos. 3, 4 and 5 who had deposed in a qualified way that a langar referred to as Mai Ji's Langar or Gariba Langar had been there in the Qila for quite a long time which was for distributing food to the destitute. In the face of this evidence on the respondents' side, the oral evidence by the petitioner's witnesses would have appeared in adequate if it was the only evidence to be considered to make out a case of feeding of voters in the Qila.

3. What really had impressed us and enabled us to say that we could find this corrupt practice committed was the Raja's account register of issues of rations from his Modikhana for this Samadhan Langar. The register showed that whereas during several years previously the issue of wheat flour for consumption in the langar had been roundly 19 or 20 maunds per month, the issues of this commodity and in like proportion of other articles of food to this langar had suddenly shot up during the month of January 1952 when elections took place and during some previous months. In June 1951, the issue of wheat flour was 23 maunds, in July 31 maunds, in August 32 maunds, in September 31 maunds, in October 52 maunds, in November 60 maunds, in December 60 maunds in January 1952 60 maunds, in February 56 maunds, in March 60 maunds. In

April 1952 it dropped down to 29 maunds and thereafter it reverted to the old scale of approximately 20 maunds per month. Evidently the budgeted figure of Rs. 6,000 a year for the Samadha langar stated by Jagir Singh could justify issue of about 20 maunds of wheat flour per month only and not more. No explanation had been offered of these large quantities of extra rations issued during the crucial months of the election period and I for one was inclined to reason that the large scale feeding evidenced by these figures had been carried on to secure good will of the people of Faridkot town towards election of the Raja's man, that the adults i.e., persons above 21 years of age who were fed there must be all electors and it was not therefore possible to view this feeding of a much larger number of persons during the election days than had been customary in Samadha langar as a form of traditional charity and it could be regarded as nothing less than a corrupt practice under clause (1) of Section 123. It seemed to me to be an inevitable conclusion despite the weak character of the oral evidence of the petitioner's witnesses that the Raja taking advantage of the charitable institution had committed the corrupt practice of bribery through it by feeding a much larger number of persons with the object of inducing the persons fed to vote at the election.

4. The witnesses for the petitioner had stated that they had seen better sort of people being taken inside the Qila for being fed. This appeared to be explained by the larger issues of rations during the same period to the Raja's "Lassi Khana" langar in which his personal guests are entertained. That, however, I was inclined to leave out of consideration by giving effect to the argument of the respondents' counsel that during election time there were naturally many people visiting Faridkot from outside and when they happened to call on the Raja, he had to feed them as a form of the customary hospitality always shown to such guests. In this way the evidence of the petitioner's witnesses was considered to be convincing in the light of the entries in the Modikhana register though without the evidence of those entries it might have appeared insufficient to justify a finding of commission of this corrupt practice.

5. The burden of proving the corrupt practice is no doubt on the petitioner but he could sustain this by using entries in the Modikhana register which are to be treated as admissions of the opposite party. The evidentiary value of these admissions is not reduced because the Raja produced these registers under orders of the Tribunal. So long as those entries remain unexplained satisfactorily, I cannot see how we can be persuaded to feel doubtful about commission of the corrupt practice now simply because upon the further cross-examination of the petitioner's witnesses, they seemed to admit what they had never previously disputed also that from the gate of the Qila one cannot see the place of cooking for this langar Samadha. Infact in the proceedings after notice to the respondents to show cause under Section 99, nothing has been elicited from the petitioner's witnesses which should detract from the value of their evidence for what it had been worth before.

6. Therefore, unless the respondents can be found now to have offered a more convincing explanation of these large quantities of rations consumed in the Samadha langar, I can see no reason to vary the conclusion which we indicated we had reached after a very full trial and hearing. In showing cause a very long statement has now been filed in contrast with the only expression 'wrong' used in the first written statement as answer to the allegation of this corrupt practice. But even this lengthy statement hardly gives any explanation as to why it was found necessary to increase largely the number of people to be fed at the Samadha Langar during the election period and why the extra people were turned out as soon as the elections were over and the normal strength of the Samadha Langar beneficiaries was resumed. Nor is any explanation of this to be made out from the further evidence oral and documentary tendered on behalf of the respondents in showing cause. The documentary evidence offered is mainly of the attendance register maintained in this langar from September 1949 to show the number of persons fed there during each month. This as my colleagues have pointed out above was allowed to go up from the same what constant figure of approximately 70 persons admitted for food during all the pre-election period, to 106 in the month of August 1951 and to a further 206 or even 213 during the following October to January 1952. I will assume that this register gives a correct picture of the number of persons fed at this langar though on behalf of the petitioner it was urged that the register does not contain the names of many more people who also must have been fed out of the large quantity of wheat flour nearly two maunds a day which was being consumed though the respondents' witnesses say that meals served to the persons named in the register were bare 3 roties for adults which would be sufficient only to keep body and soul together. With 6 chhattaks of wheat flour for each person

two maunds issued to the langar on each day should suffice for the 206 or 213 persons and if these include 50 per cent. of non-adults, this should be amply sufficient to give two full meals a day to these non-working people. It is no argument, therefore, that it was not possible to attract votes through this feeding of rather meagre meals in this langar.

7. One cannot say also that for the class of people who would not find it derogatory to go for food to a charitable langar the kind of food served could not be attractive enough to buy their votes. To the monotonous food—dal and roti—which had been doled to the unfortunate diners at the Samadha Langar year in and year out, one very welcome addition in the form of stimulant tea had been made only in the months when these extra people were being admitted for food during the election period and if we are to believe the evidence of Jagir Singh R.W. 16, the Raja was supplying milk for this tea from his household. The significant part of all this is that the Raja got a sudden impulse for showing all such benevolence only during the time the election would be looming large before him and never before in the history of langar Samadha and no sooner the election was over not only refusal was given to the many who had been newly admitted but the amenity of tea was also withdrawn though with the reduced number again left this was not going to cost much. It does not require much imagination to know why at that particular time all the opium-eaters should have thronged into the langar to claim a large quantity of tea to be allowed to them and why the Raja should have readily agreed to their appeal for being supplied tea for drinking but for the limited term of the election activity. In my opinion the force of all these circumstances which are not explained in any way to enable one to dissociate them from the election cannot be whittled down by pointing out that in the particulars the petitioner stated about wine also having been given in the langar but no evidence about wine served to any man was given. The registers produced by the Raja as pertaining to the langar contain no entries about wine. The petitioner's counsel argued that wine was infact being given from the Raja's cellar like milk from his house for tea and so entries could not be found in the Modikhana register. Though I do not accept this suggestion, I would not infer anything from the absence of proof about wine having been served in the langar. Even Dal, Roti and tea which were being served undoubtedly should be sufficiently attractive to the persons drawn from the poverty stricken and unemployed masses, who had the good fortune of being admitted by the Raja to this langar. I cannot view those large admissions as an attempt by the Raja to help combat the problems of poverty and unemployment in India in his small way. This is not what the Raja himself explains and I might have been induced to accept such explanation if those people had been allowed to continue in the langar after the elections.

8. An attempt was made to camouflage this increase in the langar by reference to some 'Poor Home' which had once existed in Faridkot State and with this object evidence of some witnesses was given and even Shri Isvaran a former Chief Secretary of the PEPSU Government was unnecessarily dragged into the witness box. This infact has been all to no purpose. The 'Poor Home' as appears in the evidence of Tara Singh R.W. 73 who had himself been an inmate of it seems to have been abolished in the year 1947 before the integration of the State and the inmates had been directed to take their food in the langar Samadha and to find their own residential accommodation. Accordingly Tara Singh was admitted to Langar Samadha along with other inmates and they were already having meals in the langar for two years when the langar came to be transferred to the Qila on 22nd September 1949. The 60 or 70 persons who were thus transferred to the Qila on that date included also the inmates of the former 'Poor Home' and they have continued in the Qila Langar unaffected by the sudden addition of the many extra men during election period and inspite of these new entrants being turned 'away' after the election. I do not, therefore, understand what can be made of the evidence given that Shri Isvaran had suggested that if the Raja had any poor on his hands for whom he wanted to get the old building of 'Poor Home' from the Government (which, the Government had definitely declined to return long before elections), he might send such poor to the Sangrur Poor Home or of the further evidence that the Raja did tell these new entrants on the occasion of his birth day celebrations on 29th January 1952 that they could either go to Sangrur or make their own arrangements for food. Even if I accept that the Raja showed such solicitude for these new entrants which I rather doubt, this in no way explains why in the first instance it had been decided to admit them. They were surely not admitted on a consideration that they had been inmates of the Poor Home previously so that it behoved the Raja to find some suitable alternative arrangement for their food and shelter. It is not even suggested that any one jumped at such kindly offer or availed himself of it.

9. Infact the attempt before us was to suggest that these many admissions had to be made by the Raja rather unwittingly, since during his absence out of India an officer of his "Controller" had without reference to him admitted 38 persons in August. I find it hard to believe this story about the admissions by Controller without any previous hint from the Raja. The further part of the story is still more ridiculous. It is said that the Raja on his return from European tour admitted at once a hundred more on being apprised that during his absence his officer had admitted thirty eight and that when Jagir Singh R. W. 16 pointed out that the usual budget amount of Rs. 6,000 had already been nearly exhausted during the first six or seven months only, sanction for a supplementary demand of another Rs. 10,000 was at once given. What the occasion for such large admissions suddenly and for so much liberality in providing for them and for many more as might be fed with the large amount of Rs. 10,000 was apart from the impending election has not been attempted to be elucidated by all such evidence. In my view the act does not become meritorious even if it be true as Jagir Singh stated that only Rs. 4,000 out of this further grant could be used in that year. That extra expenditure relates to the new admissions during a period of 4 or 5 months and is by no means small to be overlooked.

10. That not all of the new admissions could have been electors because according to the langar register 50 per cent. of them were below 21 years of age does not in my view lead to an inference that the new admissions were not with the object of inducing the electors amongst them to vote. Necessarily when a man is admitted to the langar, he would expect other member of his family also to be taken in because the practice in the Samadha Langar had been to enrol the whole families. The corrupt practice may be considered to be consisting in feeding only such of them as were electors and not their dependants. Even if there was no direct appeal to the persons fed to go and vote for the Raja's candidate, the indirect appeal to this effect on the minds of the electors fed there, cannot be ruled out and so long as the object in feeding can be inferred to be to induce the men to vote, such indirect appeal is sufficient to establish the corrupt practice specified in Section 123(1). The persons admitted were all residents of Faridkot town and presumably all above 21 years of age must have been enrolled as electors. The register produced does not give any other particulars of the persons except their names and it could not therefore be possible for the petitioner to trace out the electoral roll numbers of those persons. The respondents could easily give such particulars and point out in showing cause that the adults newly admitted were not infact electors. In the absence of even a suggestion why these admissions came to be made for the election period only, I must infer that they were for attracting votes. Even going by the entries in the register one can find that against only 30 adults who were the usual diners at this langar new admissions included at least 77 more persons who could be voters. This number cannot be considered to be negligible so as to influence us to find absence of corrupt motive in feeding them, though it is not large considering the total number of voters in Faridkot town.

11. This game was started as one of the methods of achieving aggrandizement of the Raja's ambition to which reference has already been made and Dr. Hazura Singh's candidature was part of the same scheme. The corrupt practice cannot, therefore, be dissociated from the election of Dr. Hazura Singh though its beginning is traceable to the time when the Raja could be contemplating himself to contest the election.

12. In this way I can find nothing shown by the respondents now to induce us to go back upon the view we had formed before issuing notices under Section 99 that the respondents 1 and 11 had committed the corrupt practice under Section 123(1) R.P. Act. behind the screen of the Langar Samadhan at the Qila. In my view a finding of the commission of this corrupt practice could be recorded under Section 99 and both the respondents 1 and 11 could be named for disqualification for it. The finding of the corrupt practice under Section 123(8) which has been found unanimously to be proved to have been committed by procuring assistance of B. Gian Chand Overseer will be recorded under Section 99, nothing having been said by the respondents in showing cause to induce us to go back on that finding. In my view for that corrupt practice also the respondent No. 11 could be named for disqualification alongwith respondent No. 1. There is no doubt no direct evidence about orders issued by the Raja to B. Gian Chand to assist in the election as there is none that Dr. Hazura Singh had requested him for such assistance. Under whose orders B. Gian Chand must have worked is to be inferred from the circumstances when we find that B. Gian Chand was in the position of co-servant of the Raja with Dr. Hazura Singh and it was the Raja who directed everything about the election and the doctor was a mere

nonentity we can only infer that the Raja and not Dr. Hazura Singh independently, procured assistance of B. Gian Chand. The Raja did it as agent of Dr. Hazura Singh and so under the terms of clause (8) of Section 123, he can be named for disqualification alongwith Dr. Hazura Singh himself. Dr. Hazura Singh as the elected member of the assembly would entail disqualification under Section 140 R.P. Act. The Raja, if he is named for these corrupt practices, as in my view he could be, would come for disqualification under Section 141. He should be fortunate in going unscathed when we are all agreed that he had been the prime mover in the election which was not altogether free from objectionable features.

(Sd.) V. B. SARWATE, Chairman.

The 28th September, 1953.

Order by the Tribunal

The tribunal finds it necessary under clause (a) of Section 99(1) of the Representation of the People Act, 1951, to record a finding that commission of one corrupt practice only namely that specified under clause (8) of Section 123 of the Act, has been proved in this case in that assistance of B. Gian Chand an Overseer serving the PEPSU State Government was procured in furtherance of the prospects of the election of respondent No. 1. It also finds that under clause (ii) of Section 99(1) *ibid*, the only person to be named for this corrupt practice is the first respondent Dr. Hazura Singh. This will entail disqualification under Section 140 of the Act, upon him.

About the order for costs to be made under Section 99(1) (b), we find that the petitioner has obtained declaration of the election being void upon the ground of improper rejection of certain nominations for which the contesting respondents were not responsible and that the petitioner has succeeded in proving only one out of the many corrupt practices alleged by him in the petition. He cannot, therefore, be properly allowed more than a part of the costs incurred by him. This part we assess at a lump sum of Rs. 300. We accordingly order the respondent No. 1 to pay to the petitioner Rs. 300 as costs and as for the remaining costs of the petitioner and the costs of the respondents we leave the parties to bear them as incurred.

(Sd.) V. B. SARWATE, Chairman.

(Sd.) KARTAR SINGH, Member.

(Sd.) JIA RAM SAXENA, Member.

The 28th September, 1953.

ANNEXURE 'A'.

*Finding given by Shri Jia Ram Saxena and S. B. Kartar Singh, Members,
Election Tribunal, Kapurthala at Patiala.*

ELECTION PETITION No. 160 OF 1952

Shri Kesho Ram. Versus. Dr. Hazura Singh and others.

Parties have closed their evidence, and their arguments have been heard.

From the evidence on the record as described below, read with the entries in the accountbooks and other documentary evidence, it appears that a case has been made out for issuing a notice to respondents No. 1 and 11 under the proviso to Section 99 of the Act, in respect of the charges noted below:—

- (i) That respondent No. 11 as agent of respondent No. 1 maintained a 'langer' for feeding voters at the Qila Faridkot during election period as stated by P.Ws. 4, 5, 16, 21, 22, 44, 45, 51 and 52, which is a major corrupt practice under Section 123(1) of the Act; and
- (ii) That respondent No. 1 procured assistance of B. Gian Chand, Overseer, a servant of the State Government, for the furtherance of the prospects of his election as appears in the statements of P.Ws. 36, 40, 41, 45 and 49, which is a major corrupt practice under Section 123(8) of the Act.

We have now to see whether notices should be served on these respondents in accordance with the proviso to Section 99 of the Act, before proceeding further. Section 84 of the R.P. Act (hereinafter referred to as the Act) provides what kind of relief may be claimed by a petitioner. Section 98 of the Act lays down that at the conclusion of the trial of an election petition, the

Tribunal shall make an order in terms of the relief mentioned in Section 84 of the Act or an order of dismissal. Section 99 of the Act makes it imperative for a Tribunal to record a finding when any charge is made in a petition of any corrupt or illegal practice, having been committed at the election, whether any corrupt or illegal practice has or has not been proved to have been committed by or with the connivance of any candidate or his agent at the election, and the nature of that corrupt or illegal practice. Furtheron it is provided in this section under clause (a) (ii) that the Tribunal shall record the names of all persons, if any, who have been proved at the trial to have been guilty of any of any Corrupt or illegal practice and the nature of that practice together with any such recommendations as the Tribunal may think proper to make for the exemption of any persons from any disqualifications which they may have incurred in this connection under sections 141 to 143. A proviso is attached to section 99 which is mandatory in character. It says that no person shall be named in the order under sub-clause (ii) of clause (a) unless—

- (a) he has been given notice to appear before the Tribunal and to show cause why he should not be so named; and
- (b) if he appears in pursuance of the notice, he has been given an opportunity of cross-examining any witness who has *already* been examined by the Tribunal and has given evidence against him, of calling evidence in his defence and of being heard."

The provisions of clause (a) (ii) in section 99 of the Act admit of no doubt. They enjoin that *all* persons without exception whether a party to the petition or not are to be named in the order if proved to have been guilty of any corrupt or illegal practice and that no person is to be named in the order unless he has been given a notice to appear before the Tribunal and to show cause why he should not be so named. Therefore, it is our bounden duty to issue notice to respondents No. 1 and 11 so that they may avail of an opportunity of cross-examining any witness who has *already* been examined by the Tribunal and has given evidence against them and of calling evidence in their defence and of being heard. This is a substantive right which has been reserved for such a person. A court of law ought not to deprive a person of any legal right conferred on him by an enactment. Provisions relating to disqualifications of persons under the R.P. Act, are of quasi-criminal nature. A penal statute must be construed strictly, that is to say, nothing is to be regarded as within the meaning of the statute which is not in the letter or which is not expressly and intelligibly described in the very words of the statute itself. Again every citizen of India has a statutory right under the provisions of the Constitution of India to enter into public life by taking part in elections to the Legislatures. Anything which purports to affect such a right must be jealously guarded against. It should be borne in mind that a court should not narrow down the scope or meaning of a penal provision by loose or strained construction. The function of a Court of law is not to go into the question of propriety or reasonableness of any provision of law, but to carry it out as it is. In case reported as "Nazir Ahmed Versus King Emperor" in A.I.R. 1936 Privy Council page 253 at page 257 it has been observed that where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.

It has been contended on behalf of the petitioner that the notice originally issued by the Tribunal to respondents Nos. 1 and 11 for filing written statements and settlement of issues is sufficient as they were required to meet the charge of disqualification levelled against them in the petition. The argument is untenable for the simple reason that notice issued at the initial stage of the proceedings for the first appearance of the parties before the Tribunal should not be confused with the one required by law to be given under Section 99 at the last stage after the conclusion of the trial.

It is to be observed that respondent No. 11 was not a necessary party to the petition in view of the provisions contained in Section 82 of the Act because his nomination papers were refused and he was not 'a duly nominated candidate'. Consequently no relief whatsoever as provided for under Section 84 of the Act, could be claimed against him. He could not be expected to fight out the case on a point not directly in issue between him and the petitioner. It is only after the conclusion of the trial that the matter of disqualification against a person can be taken notice of. If now no notice is issued against respondent No. 11 and a finding is given against him that he deserves certain disqualification, it would tantamount to condemning him unheard, which offends against the fundamentals of judicial principles. Even if there was no provision in the

R.P. Act on this point, natural justice demanded that an opportunity should be afforded to him to defend himself. No doubt, counsel for respondent No. 11 availed of the opportunity to cross-examine the petitioner's witnesses in this case. Such cross-examination could not be, in the very nature of things, as effective as the one done in the light of the whole evidence of the parties both oral and documentary on the record, including the account books. It is to be pointed out that proviso to Section 99 contemplates further cross-examination of the petitioner's witnesses after the conclusion of the whole trial. Such a valuable right should not be denied, if the party concerned wishes to avail of it.

Therefore, respondents Nos. 1 and 11 must be allowed an opportunity to show that the evidence against them on the record is not to be acted upon.

The 1st September, 1953.

(Sd.) KARTAR SINGH, Member.

(Sd.) JIA RAM SAXENA, Member.

Finding given by Shri V. B. Chairman, Election Tribunal, Kapurthala at Patiala.

ELECTION PETITION NO. 160 OF 1952.

Shri Kesho Ram Versus Dr. Hazura Singh and others.

I am in agreement with my learned colleagues that commission of the corrupt practices as at (i) and (ii) in the opening paragraph of their finding appear to be made out by the evidence they have indicated for which the respondents 1 and 11 will incur disqualification under Section 140 of the R.P. Act 1951 when the finding as we will record under Section 99(i) takes effect. The question presently is whether we can proceed immediately to make orders as required by Sections 98 and 99 or have to defer them for going through the procedure enjoined by the proviso to Section 99(ii). Section 98 requires the Tribunal to make an order if one of the three reliefs which the petitioner may have claimed according to Section 84 should be granted or of dismissal of the petition if it is not to be granted. At the time of making such an order, the Tribunal has also to make the following order according to Section 99 if in the election petition any charge is made of any corrupt or illegal practice having been committed at the election:

- (i) recording a finding of the commission of corrupt or illegal practice by or with the connivance of any candidate or his agent at the election and the nature of such practice;
- (ii) recording the names of all persons, if any, who have been proved at the trial to have been guilty of corrupt or illegal practice and the nature of that practice, together with any such recommendations as the Tribunal and who has given evidence against him and an from any disqualification under Sections 141 to 143.

The recording of names under (ii) is no doubt to be preceded by:

- (a) a notice, to the person to be named to appear before the Tribunal, and to show cause why he should not be so named; and
- (b) if he appears in pursuance of the notice by an opportunity to him to cross-examine any witness who has already been examined by the Tribunal and who has given evidence against him and an opportunity of calling evidence in his defence and being heard.

2. I agree that under the provisions above set out it would be desirable for the Tribunal to defer making the order under Sections 98 and 99 till after the persons to be named for the corrupt or illegal practices have been given notice and the opportunity specified in (a) and (b) above. Because if the further evidence produced by any such person and the hearing given to him is likely to influence the Tribunal's mind as regards the very fact of the corrupt or illegal practice and if the commission of such practice is to be the foundation for granting one of the declarations order Section 98, there is a chance of inconsistency arising between the tribunals' decision on the finding already recorded and the finding as may be reached after going through the procedure in (a) and (b). The proper thing would be in such case for the tribunal only to indicate on what evidence it thinks itself satisfied about the commission of the corrupt or illegal practice and what witnesses out of those already examined are being relied on by the tribunal for holding such person guilty. After giving out its mind to this extent, the tribunal should give a hearing to such persons as in (a) and (b) and then by a single final order as may be appropriate according to Sections 98 and 99 proceed to dispose of the petition. The main question to be considered here however is if it is necessary for the tribunal to resort

to the procedure above out-lined and to give the notice and the opportunity as at (a) and (b) to the persons who being respondents to the petition have in fact had such notice and such opportunity already.

3. In this election petition, the allegations of corrupt practices have been made with an assertion that they were all committed by the respondent No. 11 in the interest of the election of the 1st respondent the returned candidate. The relief claimed in the petition according to Section 84 was against the respondent No. 1. The respondent No. 11 was not a necessary party to the petition according to Section 82, because his nomination paper having been rejected he was not even a duly nominated candidate. Still the petitioner joined him as respondent on the allegation that he was the principal man in the commission of the corrupt practices though in view of his doing all that for furtherance of the election of respondent No. 1, he is to be regarded as agent of respondent No. 1 in the eye of the election law. There is a specific prayer in para 20 of the petition that the respondents 1 and 11 should be found to be guilty of the corrupt practices and upon such finding should be disqualified. The joinder of the respondent No. 11 thus gave him, as it did to respondent No. 1, notice that he was to meet the charges of corrupt practices which if proved would entail disqualification upon him and both the respondents got an opportunity of defending themselves against the charges. Though in the written statement, the respondent No. 11 entered a weak protest that he was not a necessary party he and the respondent No. 1 both continued to contest the charges. In fact they were the only contestants out of the 24 respondents named to the petition. All through-out they were represented by competent lawyers who cross-examined the petitioners' witnesses, examined a large number of witnesses in the common defence of these two respondents and addressd elaborate arguments. In this way they have already had the fullest opportunity as may be claimable under the proviso (b) to Section 99.

4. I may concede that before any person can be disqualified as a result of finding by an election tribunal he must be named under clause (ii) of Section 99. But persons joined as respondents to the petition can safely be so named without the necessity of giving them a notice or a further hearing after the trial under proviso (a) and (b). The proviso though mandatory is only so to the extent of laying down the condition precedent to the naming of any person under clause (ii) and is not to be understood as mandatory in requiring that the notice and the opportunity should be given only after the trial of the petition has been concluded. All that it says is that no person should be named unless he has had a notice that he was to be named and an opportunity of cross-examining the petitioners' witnesses who give evidence impleading him and of examining his own witnesses in defence. If as stated above these respondents have had such opportunity already, there is no point in giving them another again. That disqualification is a serious thing is not any reason for giving a second opportunity and in fact two opportunities are not contemplated by the legislature. If the persons to be named are not already parties, they will have only one opportunity before being disqualified. Under Clause (ii) of Section 99 the tribunal can make recommendation for exemption only from disqualification under Sections 141 to 143 but not from the major disqualification under Section 140 which really matters to a man in political life. The exemption to that smaller extent can be recommended even without a further hearing. The principle underlying the procedure outlined in the proviso is that no person may be condemned without being heard. The respondents 1 and 11 cannot urge that they have not had an opportunity to make their defence. From the earliest stage of the trial they had notice that they had to show cause against being named for disqualifications which follow upon a finding of malpractices at election and no further notice to them would seem to be necessary now.

(Sd.) V. B. SARWATE, Chairman.

The 1st September, 1953.

Order by the Tribunal.

There is agreement amongst us that the corrupt practices under clauses (1) and (8) of Section 123 R.P. Act, 1951 appear to have been committed at this election by the respondents 1 and 11 and also about the evidence on which such finding could be reached. This is stated in opening paragraph of the finding recorded above by two of us Shri Kartar Singh and Shri Jai Ram Saxena. The difference of opinion is only on the question whether it is necessary to give notice to these respondents according to proviso (a) to Section 99. On this point,

under Section 104 of the Representation of the People Act, 1951 the tribunal finds according to the views of the majority that respondents 1 and 11 cannot be deemed to have had such notice already and that notice to them now is necessary under the proviso to Section 99 to show cause against being named for disqualification. Notices will issue accordingly.

(Sd.) V. B. SARWATE, *Chairman.*

(Sd.) KARTAR SINGH, *Member.*

(Sd.) JIA RAM SAXENA, *Member.*

The 1st September, 1953.

[No. 19/160/52-Elec.III/4251.]

By Order,

P. R. KRISHNAMURTHY, *Asstt. Secy.*